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## Complaint

(Title Omitted in Printing)

FIRST: This Court has original jurisdiction of the subject matter of this Action, and the plaintiffs have the right to bring this suit under the XIV Article of Amendment of the Constitution of the United States and under the Civil Rights Act, U.S.C. Title 42, Sections 1983 and 1988, as well as additional jurisdiction under U.S.C. Title 28, Section 1343 (3). Relief hereunder is also sought pursuant to the Federal Declaratory Judgment Act, U.S.C., Title 28, Sections 2201, 2202, as well as under U.S.C., Title 28, Sections 2281, et seq.

SECOND: U.S. Code, Title 42, Sections 1983 and 1988 provide, as follows:

## Section 1983:

"Civil Action for Deprivation of Rights. Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress."

## Section 1988:

"Proceedings in Vindication of the Civil Rights. The jurisdiction in civil and criminal matters conferred on the District Courts by the provisions of Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the Laws of the United States . . ."



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**THIRD:** U.S.C., Title 28, Section 1343 (3) provides, as follows:

**Section 1343:**

**"Civil Rights:**

The District Courts shall have original jurisdiction of any civil action authorized by law, to be commenced by any person; . . . '(3) to redress the deprivation, under color of any state law, statute, ordinance, regulations, custom or usage, of any rights, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

**FOURTH:** U.S.C., Title 28, Sections 2281, et seq., provides for the convening of a three judge Bench where the relief requested is an interlocutory or permanent judgment restraining the enforcement, operation or execution of any statute by restraining the action of any public officer or public official in the enforcement or execution of such statute. As appears more fully below, plaintiffs seek such relief and request the convening of such court.

**FIFTH:** The within suit seeks interlocutory and permanent injunction to restrain the enforcement, operation and execution of certain laws of the State of New York, restraining officers thereof, namely, the Governor, Attorney General, Secretary of State, Lieutenant Governor as the Presiding Officer of the Senate, and the Speaker of the Assembly as the Presiding Officer thereof, from complying with the provisions of such laws or enacting new legislation in contravention of the Federal Constitution, or both. Consequently this case should be determined by

## *Complaint*

a Bench composed of three judges as provided in 28 U.S. Code 2281 et seq. Furthermore, this action seeks relief under Section 28 U.S. Code 2201, et seq. providing for the declaration of rights and other relations of any interested party or parties seeking such declaration, and for further, necessary and proper relief based upon such declaratory judgment.

SIXTH: Plaintiff, David I. Wells, is a citizen of the United States, a resident of 53-42 195th Street, Flushing, County of Queens, City and State of New York, residing within the 6th Congressional District of the State of New York, is a taxpayer in such City and State, as well as of the United States, and is also a duly registered and qualified voter of said County, City and State, and as such, is entitled to vote for members of the House of Representatives of the Congress of the United States from the State of New York. That the said David I. Wells is a recognized expert in the field of reapportionment in general and in the field of Congressional districting in particular, having had many years of experience in these fields, not only as an individual, but as the assistant director of the political department of the International Ladies' Garment Workers' Union in the City, County and State of New York, is the author of numerous articles on the subject of apportionment and districting, as well as a consultant and adviser therein.

SEVENTH: Plaintiff, Donald S. Harrington, is a citizen of the United States, a resident of 10 Park Avenue, County of New York, City and State of New York, residing within the 17th Congressional District of the State of New York, is a taxpayer in such City and State, as well as of the United States, and is also a duly registered and qualified voter of said County, City and State, and,

### *Complaint*

as such, is entitled to vote for members of the House of Representatives of the Congress of the United States from the State of New York. That the said Donald S. Harrington is the Acting Chairman of the State Committee of the Liberal Party of the State of New York. The said Liberal Party is a duly constituted political party of the State of New York, as defined in Sec. 2, subd. 4 of the Election Law of the State of New York, having obtained more than 50,000 votes, to-wit, 242,675 votes for its party candidate for Governor at the gubernatorial election held in the State of New York, on November 6, 1962.

**EIGHTH:** Defendant, Nelson A. Rockefeller, is sued herein in his capacity as Governor of the State of New York, is a citizen and resident of the City and State of New York, and as Governor is the Chief Executive Officer of the State of New York, and, amongst other things, is charged with the duty of certifying the votes and issuing his proclamation thereafter declaring the persons having the highest number of votes in each district and otherwise qualified to be duly elected to represent each particular Congressional District in New York State in the House of Representatives of the United States; and in general, supervises in large measure the activities of the major State Departments, with particular reference herein to those Departments concerned with election matters.

**NINTH:** The defendant, Louis J. Lefkowitz, is sued herein in his capacity as Attorney General of the State of New York, is a citizen and resident of the City and State of New York, and as such Attorney General, amongst other things, is charged with the duty of carrying out the laws of the State of New York, including, but not limited to, the enforcement of the Election Laws.

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**TENTH:** Defendant, John P. Lomenzo, is sued herein in his capacity as Secretary of State of the State of New York, is a citizen and resident of the City of Rochester, State of New York, and as Secretary of State, amongst other things, is charged with the duty of preparing and distributing to local Boards of Election material pertinent to election procedures; files petitions and certificates of designation and nomination; tabulates election returns, etc.

**ELEVENTH:** Defendant, Malcolm Wilson, sued herein in his capacity as Lieutenant Governor of the State of New York, and as Presiding Officer of the Senate of the State of New York, is a citizen of and resident of Yonkers, New York, and as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, is charged with the duty of presiding over the Senate in the course of its duties to make laws for the State of New York.

**TWELFTH:** Defendant, Anthony J. Travia, sued herein in his capacity as Speaker and Presiding Officer of the Assembly of the State of New York, is a citizen and resident of Brooklyn, New York, and as Speaker and Presiding Officer of the Assembly of the State of New York, is charged with the duty of presiding over the Assembly in the course of its duties to make the laws for the State of New York.

**THIRTEENTH:** The following constitutional provisions are applicable to the controversy herein:

**A.** Article I, Section 2, Part I of the Constitution of the United States, which provides in part as follows:

"The House of Representatives shall be composed of members chosen every second year by the *People* of the several states. . . ." (emphasis added).



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B. Article XIV, Section 1 of the Articles of Amendment to the Constitution of the United States which provides in part, as follows:•

“... nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

C. Article VII, Section 111, Chapter 980 of the Laws of 1961 of the State of New York, effective January 1, 1962, which provides for the composition of the 41 Congressional districts within the State of New York by specific description of the area encompassed within each Congressional district. Said Chapter is referred to herein by reference, with the same force and effect as if set forth herein at length.

FOURTEENTH: New York's Congressional districting statute established districts with very sizable and completely unjustifiable differences in population; districts with arbitrary, illogical, irrational boundary lines; districts which ignore the elementary principles of compactness and contiguity; districts which were delineated on the basis of clearly discriminatory partisan political considerations; districts which violate both the letter and the spirit of the “one man—one vote” concept.

Annexed hereto and marked “Exhibit A” and made part hereof is a chart listing the New York State Congressional districts in order of population.

As indicated therein, district populations range from as much as 471,001 (which is 15.1% above the State average) to as little as 350,186 (which is 14.4% below the State average). There is thus a difference of 120,815 between the population of the most populous district and that of the least populous district.



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That in other states where the maximum variations from the state average were less than New York's, Federal District Courts have ordered reapportionment (viz, in North Carolina, where the maximum variation was only 8.9% as compared to New York, where the maximum variation is 15.1%.)

Of further significance is the fact that the ratio between the population of the most populous district (the 12th, in Kings County) and the least populous district (the 24th, in Bronx County) is 1.3 to 1, which in effect means that each 10 persons living in the over-represented 24th district have as much power in determining the composition of the United States House of Representatives as each 13 persons living in the under-represented 12th district.

Of particular significance is the gross inequality between the populations of two directly adjacent districts in Kings County: the 12th, which, with a population of 471,001 is the most populous district in the State, and the 15th, which, with a population of 350,635, is the second least populous district in the State. The difference between the populations of these directly contiguous districts is 120,366.

Further violative of the principle of equitable Congressional districting are the tortuous boundary lines and lack of compactness and contiguity in the composition of many of the districts—compactness and contiguity being, in law, aspects of practicable equality. Appended hereto and marked "Exhibit B-1" is a map of the 24th Congressional district; "Exhibit B-2" is a map of the 23rd Congressional district; "Exhibit B-3" is a map of the 15th Congressional district; "Exhibit B-4" is a map of the 14th Congressional district; "Exhibit B-5" is a map of the 35th Congressional district; "Exhibit B-6" is a map of the 6th Congressional district, and "Exhibit B-7" is a map of the

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two segments of the 16th Congressional district, all of which demonstrate the tortuous boundary lines and lack of compactness (and in one case the lack of contiguity) which evidence lack of good faith and consequently are in violation of the Constitution of the United States. (For further clarification see "Exhibits B-8 and B-9".)

The New York State Congressional districting also clearly reveals a pattern of discrimination based on partisan political considerations which said districting invades Constitutional rights and principles which cannot be ignored or made subordinate to political expediency. Evidencing such unconstitutional discrimination is the fact that consistently, in area after area throughout the State, those Congressional districts which generally elect members of the Republican Party tend to be less populous districts and those districts which tend to elect members of the Democratic Party tend to be the more populous districts.

**FIFTEENTH:** The command of Article I, Section 2, Part 1 of the Constitution of the United States, which provides that Representatives shall be chosen "by the people of the several states", means that as nearly as is practicable one man's vote in a Congressional election is to be worth as much as another's, and where it is ascertained that a vote is worth significantly more in one district than in another, such fact would not only run counter to the fundamental ideas of democratic government but would cast aside the principle of a House of Representatives elected "by the people." Accordingly, the Congressional districting in the State of New York is in clear violation of the principles of law which require equal representation for equal numbers of people. While it may not be possible to draw Congressional districts with mathematical precision, no excuse exists for ignoring the plain

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objective and directive of the Constitution of the United States which provides for equal representation for equal numbers of people.

**SIXTEENTH:** Article XIV, Section 1 of the Articles of Amendment to the Constitution of the United States, which provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws," requires that a State make an honest and good faith effort to construct districts as nearly of equal population as is practicable. Illustrative of the fact that the New York Legislature, in passing Section 111, Chapter 980 of the Laws of 1961, made no such honest and good faith effort, is the following chart listing each instance (17 in all) in which there is a very substantial but unjustifiable and easily avoidable population difference between pairs of directly adjacent districts. (Differences of less than 35,000 are not included; also omitted are instances in which a population difference might be rationally justified by a desire to avoid crossing county lines or "natural boundaries"):

**Complaint**

<b>Adjacent Districts</b>	<b>Population Difference</b>	<b>Difference Between 2 Districts' Variation from State Average</b>
12th and 15th (Kings County)	120,366	29.4%
12th and 16th (Kings County)	118,100	28.9%
14th and 15th (Kings County)	113,322	27.6%
30th and 31st (Northeastern part of state)	107,565	26.3%
13th and 15th (Kings Co.)	104,537	25.5%
13th and 16th (Kings Co.)	102,271	25.0%
30th and 32nd (Adirondack area)	75,342	18.4%
30th and 35th (Mohawk Valley area)	74,600	18.3%
10th and 16th (Kings Co.)	69,844	17.1%
17th and 19th (New York Co.)	62,855	15.4%
11th and 14th (Kings Co.)	60,167	14.7%
17th and 18th (New York Co.)	49,010	12.0%
10th and 12th (Kings Co.)	48,356	11.8%
6th and 7th (Queens Co.)	42,477	10.3%
25th and 28th (Hudson Valley area)	42,287	10.3%
10th and 14th (Kings Co.)	41,212	10.0%
25th and 26th (Westchester Co.)	36,205	8.8%



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In the cases of those pairs of districts listed above which are located within New York City, the wide population differences could have been readily avoided by simply altering the placement of the boundary lines which separate the districts. In the upstate area, the differences indicated could have been very substantially reduced if particular counties lying along the boundaries between the districts had been included in the adjacent district rather than in the ones in which they were placed.\* (For example, there is a difference of 107,565 between the populations of the adjacent 30th and 31st Congressional districts, but if Clinton County had been included in the latter rather than the former district, the population difference would have been only 37,879).

Another significant evidence of the lack of good faith effort is afforded by the 16th Congressional district. Geographically, the 16th is the most illogically-composed district in the State. It includes all of Staten Island, which lies to the west of Brooklyn, plus a small enclave on Brooklyn's opposite (southeastern) side. The two parts of the district are completely separated not only by water but by two intervening Congressional districts, to-wit, the 13th and 15th Districts.

Staten Island's population was insufficient to comprise a district by itself, and it was therefore necessary to include it in a district with other territory. However, the only logical way to create such a district would have been to join the Island to a reasonably close-by-area—preferably to one with which the Island had some form of transportation connection. And such an area was readily available in the Bay Ridge section of Brooklyn which lies immediately across the Narrows and to which Staten Island, in 1961, was connected by regular ferry service (and to which it was soon thereafter to be connected by a highway bridge). Such a district would have been contiguous in



*Complaint*

the best way any two areas separated by water can be:— by means of a district transportation link. The inclusion of Staten Island in a district with a far-removed, completely unconnected area, was, therefore, clearly and flagrantly arbitrary, and the resulting district is, by any reasonable standard, totally lacking in both compactness and contiguity.

SEVENTEENTH: Annexed hereto and made part hereof is "Exhibit C" which sets forth a possible arrangement of Congressional districts in the State of New York whereby no district would deviate in population by more than 4.7% from the State average, and whereby the difference between the population of the most populous and least populous districts would be only 33,483. Large scale maps depicting the proposed districting described in "Exhibit C" will be filed in support hereof.

EIGHTEENTH: That plaintiffs have no adequate remedy at law for the relief sought herein.

NINETEENTH: That by reason of the foregoing, plaintiffs respectfully pray for judgment as follows:

A. That this Court take jurisdiction of the within matter.

B. That a special three Judge Court be called to hear and determine this cause and declare the right of the plaintiffs.

C. That this Court hold, adjudicate and decree that Article VII, Section 111, Chapter 980 of the Laws of 1961 of the State of New York, effective January 1, 1962, is void and invalid as being contrary to Article I, Section 2 of the Constitution of the United States.

*Complaint*

D. That this Court hold and decree that the existing Congressional malapportionment of the State of New York, has deprived and continues to deprive the plaintiffs of their rights without due process of law; that this Court further hold and decree that the existing Congressional malapportionment of the State of New York has deprived and continues to deprive plaintiffs of equal protection of the laws as guaranteed by the XIV Amendment to the Constitution of the United States.

E. That defendant, Nelson A. Rockefeller, in his representative capacity as Governor of the State of New York, and his successors in office, and his representatives, be restrained from certifying the votes, and thereafter proclaiming and declaring certain persons as having been elected to represent each particular Congressional District in the State of New York, pursuant to Article VII, Section 111, Chapter 980, of the Laws of 1961 of the State of New York.

F. That defendant, Louis J. Lefkowitz, in his representative capacity as Attorney General of the State of New York, be restrained from the enforcement of the Election Laws which would seek to enforce the provisions of Article VII, Section 111, Chapter 980 of the Laws of 1961 of the State of New York.

G. That defendant, John P. Lomenzo, in his representative capacity as Secretary of State of the State of New York, be restrained from preparing and distributing to Local Boards of Election mail pertinent to election procedures which seek to implement Article VII, Section 111, Chapter 980 of the Laws of 1961, of the State of New York, and that he be further restrained from issuing certificates of designation and nomination, and from tabulating election returns which seek to implement the aforementioned Article, Section and Chapter.

*Complaint*

H. That the defendant, Malcolm Wilson, in his representative capacity as Lieutenant Governor of the State of New York and Presiding Officer of the Senate of the State of New York, and as a representative of all of the members of the Senate, and the defendant, Anthony J. Travia, as Speaker and Presiding Officer of the Assembly of the State of New York, and as a representative of all of the members of the Assembly, be directed to take such action as may be directed by this Court to secure compliance with the Constitution of the United States.

I. That pending compliance with any direction made by this Court, jurisdiction over all the parties herein be retained by this Court.

J. That plaintiffs have such other and further relief as to this Court may be just and proper.

ISIDORE LEVINE

Attorney for Plaintiffs,

521 5th Avenue

New York, N. Y., 10017

June 29, 1966

(Appendices Omitted)

# **Notice of Motion to Dismiss Complaint**

(Title Omitted in Printing)

SIRS:

PLEASE TAKE NOTICE that the undersigned will move this Court at a Term for motions to be held in Room 506 of the United States Courthouse, Foley Square, County and State of New York, on the 13th day of September, 1966 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein against each of the defendants, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on the ground that this Court lacks jurisdiction over the subject matter of the complaint and on the ground that plaintiffs fail to state a claim upon which relief can be granted, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
August 16, 1966

Yours, etc.,

LOUIS J. LEFKOWITZ

Attorney General of the State of New York  
Attorney pro se and Attorney for Defendants, Nelson A. Rockefeller, John P. Lomenzo, Malcolm Wilson, and Anthony J. Travia

By: GEORGE D. ZUCKERMAN

To:

ISIDORE LEVINE, ESQ.

Attorney for Plaintiffs

521 Fifth Avenue

New York, New York 10017

CLERK

United States District Court

Southern District of New York

New York, New York 10013

Opinion of Three-Judge Court, May 10, 1967

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

66—Civ.—1976

DAVID I. WELLS, *et al.*,

*Plaintiffs,*

*—against—*

NELSON A. ROCKEFELLER, *et al.*,

*Defendants.*

APPEARANCES:

ISIDORE LEVINE, New York, New York,  
For Plaintiffs.

LOUIS J. LEFKOWITZ, Attorney General of the State of  
New York, Albany, New York (George D. Zucker-  
man, Assistant Attorney General, of counsel), for  
Defendants.

Before: Leonard P. Moore, United States Circuit Judge  
Lloyd F. MacMahon, United States District Judge  
John M. Cannella, United States District Judge

MOORE, *Circuit Judge*

Plaintiffs, David I. Wells and Donald S. Harrington,  
individually and as Acting Chairmen of the State Com-  
mittee of the Liberal Party of the State of New York,  
bring this action against Nelson A. Rockefeller, as Governor  
of the State of New York, the Attorney-General, the  
Secretary of State, the Lieutenant Governor and Presiding  
Officer of the Senate, and the Speaker and Presiding  
Officer of the Assembly, and pray for judgment:



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(1) that Article VII, Section 111, Chapter 980 of the Laws of 1961 (New York) is void and invalid as contrary to Article I, Section 2 of the United States Constitution;

(2) that alleged existing Congressional malapportionment deprives plaintiffs (a) of their rights without due process of law, and (b) of equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States;

(3) that the Governor be restrained from certifying votes for the election of representatives from the Congressional Districts established under Chapter 980;

(4) that the Attorney-General, and the Secretary of State be restrained from enforcing various election procedures pursuant to said Chapter; and

(5) that the Presiding Officer of the Senate and the Speaker of the Assembly be directed to take such action as may be necessary to comply with the United States Constitution.

Jurisdiction is asserted under the Fourteenth Amendment of the United States Constitution and under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 1343(3). Declaratory relief is sought under 28 U.S.C. §§ 2201, 2202 and 2281, et seq.

Upon plaintiffs' motion, a three-judge court was convened to hear the issues presented. Before this court, plaintiffs now seek a summary judgment declaring Article VII, Section 111, Chapter 980 unconstitutional. Also before us is defendants' motion to dismiss the complaint.

*The Statute Attacked as Invalid*

Prior to the enactment of Chapter 980 (L.1961), Congress, acting upon the 1960 decennial census figures, reduced the number of New York's congressional districts from 43

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to 41. Chapter 980 was enacted to establish the boundary lines of these 41 districts. At the time during which it was engaged in the task of reapportionment, the Joint Legislative Committee on Reapportionment did not have the advantage of the various rather recent decisions of the Supreme Court on the subject. Little purpose, therefore, will be served by commenting at this date on the Committee's arithmetic and geographic thinking in endeavoring to achieve such reapportionment because the ten (10%), fifteen (15%) (this figure the Committee selected as a maximum) and twenty (20%) percent variations considered by the Committee are now quite outmoded. Basically, however, the Committee did divide the population of the State into 41 parts which produced a hypothetical population figure of 409,326 per part. It then separated New York City with its population of 7,781,984 from the rest of the State. Assigning 19 districts to New York City, an average population per district of 409,578 resulted. The average for the other 22 districts was 409,109 per district. Thus, the equality of population in these areas, New York City and upstate on this grouping basis (19 and 22) is truly remarkable, and should satisfy the most population-minded court. However, in arriving at boundary lines for these 41 districts, the Legislature soon discovered that the problem was more difficult than one of long division on a classroom blackboard. Before legislative agreement was reached, the districts assumed designs of which a jigsaw puzzle artist would have been proud and which had very substantial population disparities. These disparities plaintiffs now attack and, in support of their position, cite many recent Supreme Court decisions in addition to *Wesberry v. Sanders*, 376 U.S. 1 (1964), as establishing population equality as the only guide in reapportionment.

The defendants (collectively referred to as the State) claim that the constitutionality of Chapter 980 has been sustained twice by three-judge counts, and that dismissals

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of the complaints in *Wright v. Rockefeller*, 211 F. Supp. 460 (S.D.N.Y. 1962) and in *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D.N.Y. 1963) have been affirmed by the Supreme Court, 376 U.S. 52, *rehearing denied*, 376 U.S. 959 (1964), and 376 U.S. 222 (1964), respectively.

To test the validity of the State's claim, the issues presented in these cases must be analyzed. In *Wright, supra*, although population inequalities among the 17th, 18th, 19th and 20th Congressional districts were before the court, the plaintiffs there stressed an alleged segregation of eligible voters by race and place of origin and charged that the 17th district was contrived to exclude non-whites and Puerto Ricans, whereas the 18th, 19th and 20th districts were drawn so as to include large numbers of this group. The basis for the majority decision was a failure of proof that the Legislature had fixed the boundaries of these districts along racial lines. The grounds for affirmance by the Supreme Court make such failure of proof quite explicit. Mr. Justice Black specifically stated that there was no showing "that the challenged part of the New York Act was the product of a state contrivance to segregate on the basis of race or place of origin." Conversely, the Justice said that the court was not passing on the question "whether the state apportionment is constitutionally invalid because it may fail in its objective to create districts based as nearly as practicable on equal population," referring to *Wesberry v. Sanders*, decided at the same time. 376 U.S. at 58.

In *Honeywood, supra*, the burden of the complaint was the alleged purposeful exclusion, by changing the old Fourth Congressional district into the new Sixth, of 75-80% of the Negro population residing in the old Fourth. Here again, the dismissal of the complaint was based primarily on failure of proof of any such legislative intent. Affirmance by the Supreme Court was based upon *Wright*.

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It is thus clear beyond a doubt that neither *Wright* nor *Honeywood* dealt with population disparities. Nor can they be made a sound basis for an argument that the constitutionality of the present Congressional districting statute has been sustained by these decisions.

*The Complaint*

Turning now to the present complaint, the court for purposes of the summary judgment accepts the 1960 census figures set forth therein to illustrate the disparities complained of. Using a State average of 409,324 per district, the 12th district (part of Kings County) has a population of 471,001 or 15.1% above average, whereas an adjoining district, the 15th (also part of Kings County), has a population of 350,635 or 14.4% below average—a spread between these two contiguous districts of 29.5%. From a population standpoint, there are six districts over 10% above average (452,826 to 471,001) and seven districts over 10% below average (350,635 to 361,067). The difference between the 12th (471,001) and the 15th (350,635) becomes the more curious because they are both in Kings County and contiguous. Were the populations of these two districts added and divided by two, a figure (410,818) very close to the State average would result, albeit the boundary lines of the two districts would have to be changed to achieve such equalization.

Another situation of interest exists as to Staten Island (Richmond County), a part of the 16th district. Because of insufficient population on Staten Island to constitute a Congressional district, a segment located on the side of Jamaica Bay was added. There is no way of reaching this segment of the 16th without traversing other districts or proceeding by sea. Closest to Staten Island and now connected by the Verrazano Bridge is the Brooklyn shore but this area currently is the 15th district. The 14th district also consists



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of two areas connected solely by a thin uninhabited strip between the waterfront and the Brooklyn-Queens Expressway.

In view of the conclusion reached in this opinion, further comments by the court on the seemingly bizarre structure of the present Congressional districts is unnecessary, first, because in the required redistricting, many of the problems raised by the existing lines may well become academic and, second, because the creation of district lines is, and should be a legislative and not a judicial function, unless, of course, the Legislature creates districts which offend constitutional guaranties.

The complaint also alleges that the district lines were drawn to discriminate in favor of the Republican Party. No proof has been offered to establish this point (*Wright, supra*; *Honeywood, supra*); hence, it is unnecessary to pass upon its legal sufficiency. However, the Supreme Court in New Jersey did find that "the Constitution is not offended merely because a partisan advantage is in view," *Jones v. Falcey*, 48 N.J. 25; 222 A. 2d 101 (1966) and in *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 (S.D. N.Y. 1965) *aff'd on motion* 382 U.S. 4 (1965), the court said that *Fortson v. Dorsey*, 379 U.S. 433 (1965) "makes it clear that the Supreme Court has refrained from condemning partisan gerrymandering as unconstitutional." (p. 926).

*The Law*

Since the broad principles established by *Baker v. Carr*, 369 U.S. 186 (1962), two rules applicable to congressional districts have emerged. First, substantial equality of population among districts in any state is required. Second, there is a burden on the proponent of any districting plan to justify deviations from equality.

I. The first principle stems from *Wesberry v. Sanders*, 376 U.S. 1 (1964), namely, that the command of Art. I, § 2 of the United States Constitution "means that as nearly as practicable one man's vote in a congressional election is

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to be worth as much as another's." (p. 8). To achieve this purpose, the Supreme Court held that "While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." (p. 18). Conversely, the Court was unwilling to hold that "legislatures may draw the lines of Congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others." (p. 14).

*Wesberry* was soon followed by *Reynolds v. Sims*, 377 U.S. 533 (1964) in which, although it was a State legislative apportionment case, the Court stated specifically that in *Wesberry* it had "determined that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts established by a state legislature for the election of members of the Federal House of Representatives." 377 U.S. at 559.

After alluding to the differences in the application of the equality rule to state legislative as contrasted with congressional districts, the Court gave the definite pronouncement that "*Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State." *Ibid.* at 560-61.

Such expressions as "as nearly as practicable" and "substantial equality" were bound to give rise to various interpretations.

To the court in *Calkins v. Hare*, 228 F. Supp. 824, 828 (E.D. Mich. 1964), even a "small percentage of the entire voting population" had a right to vote equally with others, "no matter what percentage of the total they comprise".

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In *Preisler v. Secretary of State* (*Preisler II*),<sup>1</sup> 257 F. Supp. 953, 975 (W.D. Mo. 1966), *aff'd per curiam sub nom. Kirkpatrick v. Preisler*, 385 U.S. 450 (1967), the court interpreted the Supreme Court's rulings subsequent to *Wesberry* in *Drum v. Seawell*, 383 U.S. 831 (1966), *affirming per curiam*, 249 F. Supp. 877 (M.D. N.C. 1965),<sup>2</sup> and in *Alton v. Tawes*, 384 U.S. 315 (1966), *affirming per curiam, Maryland Citizens Committee for Fair Congressional Redistricting, Inc. v. Tawes*, 253 F. Supp. 731 (D.Md. 1966),<sup>3</sup> as holding that "population alone is the sole standard for congressional redistricting."

In *Bush v. Martin* (*Bush II*), 251 F. Supp. 484, 497 (S.D. Tex. 1966),<sup>4</sup> the court equated the "as nearly as practicable" in *Wesberry* (congressional) with the "substantial equality" of *Reynolds* (state legislative) and noted the comment in *Reynolds* that "Mathematical exactness or precision is hardly a workable constitutional requirement." (377 U.S. at 577). The court in *Preisler II*, disagreeing with the *Bush II* approach, refused to follow it. 257 F. Supp. at 979.

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<sup>1</sup> *Preisler II* is a sequel to *Preisler v. Secretary of State*, 238 F. Supp. 178 (W.D. Mo. 1965), a case in which the 1961 Congressional Redistricting Act of Missouri was declared unconstitutional. In *Preisler II*, the same plaintiffs succeeded in striking down Missouri's 1965 Congressional Redistricting Act.

<sup>2</sup> Prior to the Supreme Court's affirmance, the District Court held unconstitutional the North Carolina Congressional Redistricting Act passed by the state legislature pursuant to the 1965 decree, but stayed its mandate, allowing the Redistricting Act to govern the 1966 congressional elections only. 250 F. Supp. 922 (1966).

<sup>3</sup> The District Court adopted its own redistricting plan following two unsuccessful attempts by the Maryland legislature to enact constitutional congressional redistricting plans. See earlier decisions. 228 F. Supp. 956 (D. Md. 1964) and 226 F. Supp. 80 (D. Md. 1964).

<sup>4</sup> In *Bush v. Martin* (*Bush I*), 224 F. Supp. 499 (S.D. Tex. 1964), *aff'd per curiam*, 376 U.S. 222 (1964), the District Court declared the Texas congressional districting statute unconstitutional. *Bush II* declared the 1965 Texas Congressional Redistricting Act to be valid for a limited period of time, leaving it for the 1967 Texas legislature (itself reapportioned) to correct the deficiencies of the 1965 Act.

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At this juncture came the decisions of the Supreme Court on January 9, 1967, which we regard as determinative of the issues here. Although *Swann v. Adams* (Swann III), 385 U.S. 440 (1967)<sup>5</sup> involved the redistricting of Florida's legislature, the opinion of the Court is applicable (actually *a fortiori*) to congressional districts. The deviations in districts in *Swann* III were substantial, 15% above average in one, 14% in five and more than 10% in six. To us, it seems highly significant that the Supreme Court did not renounce all considerations other than absolute mathematical equality. On the contrary, it specifically adverted to the justifiable variations from a pure population standard and mentioned as possible justifications "integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines," as set forth in *Reynolds*, 377 U.S. at 579. Such an interpretation of *Reynolds* was wholly consistent with a "rule of reason" in reapportionment matters. The alternative

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<sup>5</sup> This represents the third time this case has been before the Supreme Court. In 1964, the Supreme Court in *Swann v. Adams* (I), 378 U. S. 553, reversed the judgment of a three-judge District Court, *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla. 1963), upholding the then current legislative apportionment in Florida and remanded the case for further proceedings.

In 1965 the Florida legislature adopted a new plan which the District Court declared unconstitutional, but approved on an interim basis for a period ending 60 days after the adjournment of the 1967 session of the Florida legislature.

In *Swann v. Adam* (II), 383 U. S. 210 (1966), the Supreme Court again reversed the District Court, finding the waiting period to be too long and remanded so that a valid reapportionment plan might be enacted for the 1966 elections.

In March of 1966, the Florida legislature enacted yet another legislative reapportionment plan, which plan the District Court upheld, 258 F. Supp. 819 (S.D. Fla. 1965). In *Swann III* the Supreme Court reversed the District Court for the third time, finding unjustified, impermissible population variances between districts.



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would have been abject judicial surrender of jurisdiction to the mindless computer.

The significance of *Swann III* in congressional district cases is disclosed in the Court's brief "Per Curiam" (also January 9, 1967) in *Duddleston v. Grills*, 385 U.S. 455, wherein the Court vacated the lower court's approval of a redistricting plan (Indiana)<sup>6</sup> and remanded the case "for further consideration" in the light of *Swann III*, *Wesberry* and *Reynolds*. *Preisler II*, declaring Missouri's reapportionment unconstitutional, was affirmed, 385 U.S. 450. Thus, in summary, the Supreme Court's current views appear to be that the "equal population principle" applies to congressional districts—unless—. The "unless" gives rise to the second principle.

II. The second principle is found in *Wesberry*, *Reynolds* and the January 9, 1967 decisions, and is that if there is any deviation from equality of population, the burden is on the State or other proponent to justify the deviation. In *Swann III*, the Court reversed "for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts . . ." There was "no attempt to explain or justify the many variations . . ." The Court cited with approval the statement in *Maryland Citizens, supra*, 253 F. Supp. at 733 that there was no showing that the variation was "unavoidable or justified upon any legally acceptable ground." Thus, the Court does not close the door to disparity provided it be slight and provided it be justified on a "legally acceptable ground."

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<sup>6</sup>The lower court decision was *Grills v. Branigin*, 255 F. Supp. 155 (S.D. Ind. 1966).

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It is too clear for debate that the present Act, creating the undisputed disparities in New York's congressional districts, violates constitutional requirements as enunciated by the Supreme Court. On the basis of population inequality alone, the Act fails to meet constitutional standards. Thus, reapportionment is required.

Despite the fact that "congressional apportionment is essentially a legislative function", *Bush II, supra*, 251 F. Supp. at 517, certain precepts to be found in the Supreme Court opinions should be noted. The congressional districts (the geographic units) should be contiguous and as symmetrical as possible. The districts should be established "without regard to race, sex, economic status, or place of residence within a state," (*Reynolds*, 377 U.S. at 561) so that "once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and whatever their home may be in that geographical unit." *Gray v. Sanders*, 372 U.S. 368, 379 (1963). Although political considerations *per se* do not create an unconstitutional apportionment, political history teaches the lesson that there are political changes in practically all areas from time to time. No district can be regarded as the private preserve for any present incumbent if it offends the equality of population principle. Even if radical changes have to be made to meet the constitutional test, there will always be available leaders in every district who will be able to vie for the favor of their electorate. As long as these leaders collectively represent substantially equal numbers of a State's population, constitutional requirements would appear to have been met.

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## THE REMEDY

*Time Table*

In *Swann v. Adams* (Swann II), 383 U.S. 210 (1966), the Supreme Court, referring to litigation commenced in 1962, wherein it had remanded the case in 1964 for further proceedings in the light of *Reynolds* and related cases, 378 U.S. 533 (1964) said, "The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. [1965 plan held unconstitutional by District Court but approved provisionally up to 60 days after adjournment of 1967 session of Florida legislature]. While recognizing the desirability of permitting the Florida legislature itself to determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years." The Court (February 25, 1966) remanded "so that a valid reapportionment plan will be made effective for the 1966 elections." 383 U.S. at 212.<sup>7</sup>

In *Preisler II*, the District Court (August 5, 1966), under threat that if the 1967 legislature did not comply "with the clear commands of both the Constitution of Missouri and the Constitution of the United States", indicated that "the inevitable and totally predictable result" would be that the court would decree an "at large" election for Missouri's ten Congressmen. Proper respect for the equally constitutional division of our government into legislative, executive and judicial branches causes us to refrain from any *in terrorem* or declaratory and anticipatory comments. Nevertheless, the action taken by these courts is indicative that unreasonable delay will not be tolerated.

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<sup>7</sup> See note 5, *supra*.

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We are not inclined, tempting though it be, to play a game of redistricting chess wherein we would move towns and counties from one district to another until our conception of substantial equality would be achieved. Nevertheless, the thoughtful and well-reasoned opinion of the New Jersey Supreme Court suggesting this approach in *Jones v. Falcey, supra*, is indicative not only of a desire of the courts to be helpful but also of a willingness to disclose the various possibilities which might lead to constitutional success. Only failure, willful or otherwise, to heed the Supreme Court's mandates, could have led to the Roman numbers I, II and III, after the names of the cases cited herein which have resulted in constitutional rejection.

The New York legislature will reconvene in January 1968, unless it is called into special session earlier. Despite the many problems involved, there would seem to be no insuperable difficulty in making adjustments substantially to equalize the 41 congressional districts. Plaintiffs have submitted (Exhibit C to complaint) "A Possible Arrangement of New York State Congressional Districts under which No District Would Deviate in Population by more than 4.7% from State Average." They recognize that it is only a "possible" arrangement. As the many exhibits in the many reapportionment cases demonstrate, there are always a host of proffered solutions. The decision lies with the legislature. We note, however, the fact that there are six pairs of adjacent districts (five of the six in Kings County) with a population difference of over 100,000 and five such districts with a difference of between some 60,000 and 75,000 suggests a partial solution. There are also districts where the transferral of a single county as a unit to an adjacent district would greatly lessen the present district disparity.

The time table problem is seriously affected by the necessity for reasonably accurate population statistics.



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Presumably most, if not all, calculations in the various cases have been based on the 1960 United States census. There will not be another census until 1970. Assuming the figures will be available in 1971 and the number of seats allotted to New York is known, the earliest Congressional election under the new districts would be 1972.

Had the population remained static, the court could specify the 1960 census as a base. However, no court should blind itself to the world of today. To use 1960 figures in many areas would be to enforce the disparity of which plaintiffs complain. The population changes in Staten Island (Richmond County) since the opening of the Verazzano Bridge and the influx into Nassau and Suffolk Counties particularly in the industrialized areas have been substantial.

Accuracy would call for a decree which would be based upon the 1970 census, knowledge of the number of congressional seats, and the immediate enactment in 1971 of a Constitutional Act based upon the Supreme Court mandates, which Act would apply to the 1972 election of congressmen and which would retain jurisdiction in this court as a forum before which the litigants could press alleged failures to proceed. Against this approach is the Supreme Court's impatience on February 25, 1966, in *Swann II*, *supra*, directing a valid plan for the 1966 elections. This followed that Court's remand on June 22, 1964 (*Swann I*, 378 U.S. 553) for reapportionment according to *Reynolds* and related cases. The 1965 Florida Legislature reapportioned but, as previously mentioned, the Supreme Court thought that the District Court, despite its declaration of unconstitutionality, was too liberal in giving the 1967 Legislature an opportunity to create a proper plan, and remanded for a plan effective for the 1966 elections. The 1966 Legislature tried again. This time the District Court held the plan to be constitutional. But the 30% (Senate).

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and the 40% (House) variations were too much of a strain for "as nearly as practicable" and "substantial equality" and again the Supreme Court reversed. Presumably, the 1968 Legislature will produce a plan.

Little guidance or help comes from these precedents. The easiest (for the court) solution is merely to direct the New York Legislature in 1968 to produce a constitutional plan. Let them use any available population figures they can muster; let them divide the State into 41 substantially equal parts; provided they be reasonably compact and contiguous. Let them deliberate as free and independent legislators so long as they do not allow considerations of race, sex, economic status or politics to cross their minds. Then, when their handiwork is complete and is presented to us, we will have an opportunity to tell them whether they have articulated acceptable reasons for such variations as may exist. With judicial guidelines as definite as they now are, our opinion of approval or disapproval should be filed before 1969 with Supreme Court summary action by early 1970.

Just as litigants seek compromises as the most expedient, if not the best, solution, so not infrequently the courts. Acting upon the assumption that accurate congressional representation (1972-1982) must await the 1970 census and upon the Supreme Court's understandable objection to protracted delay, a compromise may be in order. The 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present. There are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities. Furthermore, these changes may well survive the 1970 census and any alteration in number of seats. This hope may serve to dispel the objection: is it worthwhile to disarrange the present districts just for two (at most three) elections? Any rearrangement, of course,

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may be disturbing to the present incumbent. But no incumbent has a vested life interest in any fixed territory. Nor should any successor look forward to such a right. It is the people who are entitled to his enclave. If the districts are rearranged on a more equal basis, the court will take judicial notice that there will be no dearth of congressional candidates from each district, seeking by their voter blandishments to assure their prospective constituents that they will give them the best possible representation.

Therefore, although not unmindful of the risks and disturbances attendant to change, the court assumes this risk. Laws insofar as possible should not be retroactive. To declare that the acts of Congressmen and State legislators might have been tainted with illegality merely because they were elected from districts which we now hold fail to conform to constitutional requirements would be most unwise. Nor would such a holding advance plaintiffs' cause. We can, and do, say, however, that a plan must be created by the 1968 Legislature which will provide for congressional districts in conformity with the Supreme Court's precepts so that the people of the State of New York may vote for their congressmen from such districts in the 1968 congressional elections. In so directing, we are following the pattern set by the Supreme Court in *Swann II*, *supra*, and in *Duddleston v. Grills*, 385 U.S. 455 (1967).

It is not for this court to dictate to the Legislature the methods whereby substantial equality is to be attained. It may be suggested, however, that population statistics as of December 31, 1966, might well be capable of reasonable ascertainment from various sources to which the Legislature would have access. Such current figures should tend to reflect the radical population changes in the areas where such changes have occurred. In the stable and rather static metropolitan districts, particularly in New York City where there are to be found many examples of the greatest

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disparity, 1960 census figures could be used. Even if perfection cannot be achieved between now and 1973, improvement is worth the effort.

This court retains jurisdiction of this action so that the parties hereto may in the future apply for such relief as may be warranted.

Settle judgment on notice.

LEONARD P. MOORE

USCJ

LLOYD F. MACMAHON

USDJ

JOHN M. CANNELLA

USDJ

New York, N. Y.

May 10, 1967



Order of Three-Judge Court, July 26, 1967

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DAVID I. WELLS, *et al.*,

*Plaintiffs,*

*—against—*

NELSON A. ROCKEFELLER, *et al.*,

*Defendants.*

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Defendants having moved this Court for an order dismissing the complaint herein, and the plaintiffs having moved for the convening of a three Judge Bench, and the within matter having been referred to a Three Judge Statutory Bench by order of this Court dated the 24th day of October, 1966, and defendants having moved before the Three Judge Bench to dismiss the complaint herein, and plaintiffs having cross-moved for summary judgment, and the motions having been heard before the Three Judge Bench on November 17, 1966,

Now, on reading and filing the complaint herein, dated June 30, 1966, the affidavit of David I. Wells, dated August 29, 1966, the defendants' Notice of Motion to dismiss, and plaintiffs' cross-motion for summary judgment, and upon all the papers and proceedings heretofore had herein, and after hearing Isidore Levine, Esq., attorney for plaintiffs in support of plaintiffs' cross-motion, and Louis J. Lefkowitz, Attorney General of the State of New York, by George D. Zuckerman, Assistant Attorney General, of counsel, on behalf of the defendants, and after filing the decision of this Court dated May 10, 1967, it is

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**ORDERED, ADJUDGED AND DECREED**, that defendants' motion to dismiss be denied in all respects, and it is further

**ORDERED, ADJUDGED AND DECREED**, that plaintiffs' cross-motion for summary judgment be granted in all respects, and it is further

**ORDERED, ADJUDGED AND DECREED**, that Chapter 980 of the Laws of 1961, of the State of New York, effective January 1, 1962, is void and invalid as being contrary to Article I, Section 2 of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, in that the Congressional districts established by such section and Chapter are not of substantial equality in population, and in that the State has not proven that the many variations in district populations established by Chapter 980 are unavoidable or are explained or justified upon any legally acceptable ground, and it is further .

**ORDERED, ADJUDGED AND DECREED**, that the Legislature of the State of New York (as well as any delegated authority, which may be duly constituted in the future to draw any Congressional districting plan in New York State), be and is hereby directed to enact into law a Congressional districting plan, effective no later than March 1, 1968, which districting plan shall be in conformity with the redistricting principles as set forth in the applicable decisions of the Supreme Court and/or such Congressional enactments as may be in force with respect thereto; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the delineation of such Congressional districts be not based upon considerations of race, sex or economic status, and it is further

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**ORDERED, ADJUDGED AND DECREED**, that pending compliance with the within order, this Court retain jurisdiction over all of the parties herein so that any party may in the future apply for such relief as may be warranted.

/s/ **LEONARD P. MOORE**  
**U.S.D.J.**

/s/ **LLOYD F. MACMAHON**  
**U.S.D.J.**

/s/ **JOHN M. CANNELLA**  
**U.S.D.J.**

**July 26, 1967**

**Judgment Entered 7/27/67**

/s/ **JOHN J. OLEAR, JR.,**  
**Clerk**

Opinion of Supreme Court, December 18, 1967.

ROCKEFELLER, GOVERNOR OF NEW YORK,

ET AL. v. WELLS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

No. 691. Decided December 18, 1967.

273 F. Supp. 984, affirmed.

*Louis J. Lefkowitz*, Attorney General of New York,  
*Samuel A. Hirschowitz*, First Assistant Attorney General,  
and *George D. Zuckerman*, Assistant Attorney General,  
for appellants.

*Isidore Levine* for appellees.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE HARLAN, dissenting.

This action was brought by appellees under the Civil Rights Act, 42 U.S.C. §§ 1983, 1988, for declaratory and other relief. Their complaint alleged that New York's congressional districting statute does not conform to the requirements of Art. I, § 2, of the United States Constitution, as those requirements are defined in *Wesberry v. Sanders*, 376 U.S. 1. A three-judge court was convened.

The court found, on the basis of 1960 census statistics, that the population of one of New York's 41 congressional district varied from the average population of the districts by 15.1%, and that 12 other districts varied from



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the population average by as much as 10%. It concluded that such a variation from average, without a suitable explanation, "violates constitutional requirements." 273 F. Supp. 984, at 989. The court noted that there have been "substantial" population changes in these districts since 1960, and that complete accuracy in redistricting must await the results of the 1970 census, but reasoned that a suitable compromise would be to require redistricting immediately, premised on the best population figures now available. Revisions could then be made when the 1970 census statistics were released. This Court simply affirms, without elaboration or opinion.

There are, in my opinion, two principal issues here worthy of plenary consideration. First, the District Court thought it "too clear for debate" that this districting statute "violates constitutional requirements as enunciated by the Supreme Court." 273 F. Supp., at 989. There are few issues in reapportionment cases that are clear beyond debate, and, with respect, the invalidity of this statute is certainly not among them. It is true that variations of as much as 18.28% were disapproved in *Swann v. Adams*, 385 U.S. 440, but the Court there also re-emphasized that the approval or disapproval of the variations in one State "has little bearing on the validity of a similar variation in another State." *Id.*, at 445. And see *Reynolds v. Sims*, 377 U.S. 533, 578. The impossibility of calculating the proper result in these cases from numerical variations is illustrated by *Toombs v. Fortson*, 241 F. Supp. 65. The District Court there said specifically that "we will base any test as to the reasonableness of variances on the departure figure of 15 percent." *Id.*, at 70. This Court simply affirmed without opinion. 384 U.S. 210. See also *Moore v. Moore*, 246 F. Supp. 578, 582. Yet in this case, in which variations no greater than 15.1% are in issue, the Court again summarily affirms.

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Presumably the size of the numerical variation is not alone decisive,<sup>1</sup> but if the "particular circumstances of the case," *Reynolds v. Sims, supra*, at 578, *Swann v. Adams, supra*, at 445, may be crucial to the validity of districting statutes, then surely the Court should endeavor to define what such circumstances are, and to indicate how they are relevant. Instead, the Court more and more often disposes of reapportionment cases summarily, see, e.g., *Toombs v. Fortson, supra*, *Duddleston v. Grills*, 385 U.S. 455; *Kirkpatrick v. Preisler*, 385 U.S. 450; *Lucas v. Rhodes, ante*, p. 212; and when the Court does issue an opinion, it is content simply to recite that such circumstances may be relevant, without undertaking any elucidation. See, e.g., *Swann v. Adams, supra*. All this has the effect of leaving the state legislatures,<sup>2</sup> the lower courts, and even Congress<sup>3</sup> without meaningful guidance.

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<sup>1</sup> I note, however, that the District Court in *Preisler v. Secretary of State of Missouri*, 257 F. Supp. 953, said specifically that "population and population alone is the sole standard for congressional representation." *Id.*, at 973. This Court affirmed without opinion. 385 U. S. 450. See also *Bush v. Martin*, 224 F. Supp. 499, 511; affirmed 376 U. S. 222.

<sup>2</sup> The New York Legislature, for example, made careful efforts to comply with the constitutional requirements, as they had been enunciated by this Court. The Joint Legislative Committee on Reapportionment thus expressly recognized "the absence of Federal and State constitutional and statutory standards," but concluded that "the most important standard is substantial equality of population." Interim Report of the Joint Legislative Committee on Reapportionment, 1961 N. Y. Leg. Doc. No. 45, p. 4. It added that "[w]hile exact equality of population is the ideal, it is an ideal that, for practical reasons, can never be attained. Some variation from it will always be necessary. The question arises as to what is a permissible fair variation." *Ibid.*

<sup>3</sup> The House Committee on the Judiciary, for example, reported favorably in 1965 on a bill which was intended to implement the requirements of *Wesberry v. Sanders, supra*, by creating a series of standards for the apportionment of congressional districts. The Committee noted that "[t]he courts . . . have been reluctant to prescribe standards . . ." H. R. Rep. No. 140, 89th Cong., 1st Sess., 2. One standard included in the bill was a maximum permissible variation of 15% above or below the average population of the congressional districts within a State. *Id.*, at 2-3. Given the

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Second the confusion created by the Court's reticence is compounded, in cases in which it is held that a districting statute does not satisfy constitutional requirements, by uncertainty as to the appropriate next step. See, e.g., *Lucas v. Rhodes*, *supra*. The District Court here noted that the Court's cases provided "[l]ittle guidance or help," but concluded, nonetheless, that immediate redistricting should be ordered, based on the best available population figures. It thought that this expedient was, in the pattern set by *Swann v. Adams*, 383 U.S. 210. *Swann*, however, was merely a brief *per curiam* opinion, which did not purport to establish any general rule on appropriate remedies. As the elections of 1968 approach, it seems to me that the time has come for this Court to provide clearer guidance to the lower courts on the proper remedy in reapportionment cases. More particularly, some indication should be given as to what part, if any, 1960 census figures are to play, alone or in combination with later, albeit incomplete or unverified, population figures. See *Lucas v. Rhodes*, — F. Supp. , *ante*, p. 212.

I would note probable jurisdiction, and set the case for argument.

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present state of the law in this area, it is difficult to imagine how a legislator could sensibly decide whether such a maximum variation satisfied applicable constitutional requirements. Indeed, Representative Kastenmeier dissented from the Committee's report, noting that "there is serious doubt whether H. R. 5505 can, in light of the *Wesberry* case, withstand constitutional attack." *Id.*, at 5.

**Opinion of Three-Judge Court, March 20, 1968**

**MOORE, Circuit Judge.**

In its order (July 26, 1967), this court directed the Legislature of the State of New York "to enact into law a congressional districting plan, effective no later than March 1, 1968, which districting plan shall be in conformity with the redistricting principles as set forth in the applicable decisions of the Supreme Court and/or such Congressional enactments as may be in force with respect thereto." In its opinion, 273 F. Supp. 984 (May 10, 1967) this court held that "[o]n the basis of population inequality alone, the Act [the 1961 Act] fails to meet constitutional standards." Elaborating upon this inequality, the court noted a population in the former 12th district (Kings County) of 471,001 and in the adjoining former 15th district (also, Kings County), a population of 350,635—a difference in contiguous districts of 29.5% from the state average. Six pairs of adjacent districts had population differences of over 100,000. These figures, of necessity, were based on the 1960 census; there will be no other statewide census until 1970.

The Supreme Court has indicated that time is of the essence and that voters should not have to await such future legislative action as may be required after the 1970 figures shall have been announced. Accordingly, this court held that "[t]he 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present." Mindful of the practical difficulties attendant to an expeditious equalization of districts, the court, although reiterating a lack of any intention "to dictate to the Legislature the methods whereby substantial equality is to be attained" suggested that "[t]here are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities" and urged that "[e]ven if perfection cannot be achieved between now and 1973, improvement is worth the effort."



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The Legislature reconvened in January 1968 and on February 26, 1968 repealed Article Seven relating to congressional districts (held to be unconstitutional) and enacted a new Article Seven establishing new congressional districts (S. 3980-A.5780). On that day, the new act became law as Chapter Eight of the Laws of 1968 upon signature by the Governor.

This court had retained jurisdiction of the action to enable the parties to apply for further relief. Pursuant to this provision, the plaintiffs submitted their objections to the new enactment. Various individuals sought leave to intervene to express their objections. Leave was granted to all and an opportunity was given for the presentation of their views on a hearing in open court held on March 12, 1968. Plaintiffs and the intervenors have also submitted briefs and affidavits. The Attorney General representing the defendants has also presented a brief and the "Interim Report of the Joint Legislative Committee on Reapportionment." In addition, Robert Brady (Special Counsel for the Committee) and Donald Zimmerman (Counsel for the Temporary President of the New York State Senate) made statements to the court in explanation of the rationale of the plan.

The intervenors, Frederick W. Richmond, a resident of the 14th district, Eugene Victor, a resident of the old 12th, now the new 15th district and Armand J. Starace, a resident of the Bay Ridge area, all complain of the way the district lines in Brooklyn have been drawn. They claim that the integrity of their communities and neighborhoods has been violated and that the new lines represent a bipartisan agreement to protect all incumbents. Victor charges that as a Reform Democrat, his candidacy for Congress has been impaired by so drawing the lines as to remove him from the Flatbush area (the 13th) to the new 15th. They also point to the divisive character of the lines as they affect Coney Island and Bay Ridge. All desire the adoption of plaintiff's proposed plan.

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The intervenors Mary Leff and Kathryn Goldman are disgruntled with the new 21st and 23rd districts in the Bronx. Mary Leff is a member and an officer of an Independent Democratic Club in the 21st district which will become part of the 23rd and Kathryn Goldman is a member of a Reform Democratic Club and a County "committee-man" for her election district. She also wishes to have the lines of the 21st and 23rd districts redrawn in a manner proposed on a map submitted by these intervenors.

The intervenors Andrew Cooper, Paul S. Kerrigan and Joan C. Bacchus are primarily interested in the Brooklyn districts. John R. Pillion also intervened.

The intervenors, Samuel I. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H. Fox object to the division of their community, Crown Heights, in Brooklyn between the new 10th and 12th districts and would have Atlantic Avenue as the dividing line instead of the line fixed by the Legislature.

The rationale of the plan as enacted is contained in the Interim Report of the Joint Committee on Reapportionment submitted to the Legislature to accompany S.3980; A.5780 dated February 22, 1968 (Interim Report). The report assertedly took cognizance of the various decisions of the Supreme Court with reference to redistricting from *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L. Ed.2d 481 (1964) to *Swann v. Adams*, 385 U.S. 440, 87 S.Ct. 569, 17 L.Ed.2d 501 (1967) and *Lucas v. Rhodes*, 389 U.S. 212, 88 S.Ct. 416, 19 L.Ed.2d 423 (December 4, 1967). The 1960 census figures were used. Because primary elections are to be held on June 18, 1968 and the first day to circulate petitions is April 2, 1968, the report recommended following "election district lines where at all possible, to reduce the work of the individual Board of Elections to a minimum."<sup>1</sup>

<sup>1</sup>Interim Report p. 9. Split election districts in the State total 16: Nassau, 4; Queens, 1; New York, 6; and Bronx, 5.

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Priority was given to population totals of the various districts. Other considerations were "the geographical conformation of the area to be districted, the maintenance of county integrity, the facility by which the various Boards of Elections can 'tool up' for the forthcoming primary election, equality of population within the region, and equality of population throughout the state."<sup>2</sup>

The peculiar geographical contour of the State was taken into consideration. It "most naturally divides into regions."<sup>3</sup> The report concludes that "[p]opulation, interest, finances, a charter, custom and history—all tend to separate the City of New York from the rest of the state."<sup>4</sup> There has been no contention by any of the parties that the separability of New York City from the rest of the State is not logical and proper. Actually the 19 City districts average 409,109 persons per hypothetical district as against a State average for 41 districts of 409,326 (1960 census).

Long Island east of New York City contains only the counties of Nassau and Suffolk. To obtain equality of population per district for this area, five districts were necessary. Almost exact equality of population was obtained, the range being from 393,585 to 393,183. [Had four districts been drawn, the population of each would have been over 491,000; a disproportionately large figure. Any attempt to start at Montauk Point and to move west in units of 409,000 would have violated county, city, town and other historical traditions as well as requiring an invasion of New York City].

Queens and Kings, the western counties of Long Island, although a part of New York City are geographically separated from Manhattan and the Bronx by water. To preserve

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<sup>2</sup> Id., p. 10.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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county integrity, as far as possible, Queens except for the 10th district was divided into four units with a population range of 434,770 to 434,552—and a part of Queens joined with a part of Kings in the 10th. [Five units would have resulted in too small a population per unit.]

Kings (or Brooklyn) has five districts plus parts of Queens (the 10th), and because Richmond (Staten Island) is not sufficiently large for a full district, Kings has to contribute to it (the 16th). It is in this area that the greatest population disparities were found in the 1961 Act which this court held to be unconstitutional. Almost absolute equality has been attained for these seven districts, the range being from 417,040 to 417,478.

Moving across the river to Manhattan (New York County) and across another river to the first mainland of the State (Bronx County), this area has been combined into eight almost equal districts with only the 21st requiring a county division, the range being from 390,023 to 390,861.

Above the New York City line (upstate so-called), the pattern largely falls into county lines. Westchester, a large county, has been merged with adjacent Putnam, a very small county, to produce two districts of 420,146 and 420,467, respectively.

Continuing westward across New York State, except for the cities of Syracuse and Rochester, the population of the counties is comparatively small. Many counties are required to constitute one congressional district. Witness the 35th district which comprises eight counties for a population of 386,148. The report and the plan endeavor not to disturb the historic tradition of county joiner.

Upon reaching Buffalo, the problem of Erie (1,064,688) and adjoining Niagara (242,269), the Niagara Frontier—is presented. This population could not very well be shunted into the more easterly counties. The area could not be divided into four districts of only some 326,000 each. Therefore, the plan provided three districts of 435,393 to 435,880 which the court finds satisfactory.

When the plan is analyzed, the population disparities—such as they are—are not to be found within the various



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regions where mathematical equality has virtually been achieved. The differences are largely between the regions themselves, New York and the Bronx on the east, Buffalo on the west. Furthermore, these differences do not form the real basis of the objections.

[1-3] Applying the formulae of permutations and combinations, a myriad of theoretical districts could be evolved. Thus, plaintiffs urge their plan as somewhat more equal in population. Undoubtedly, others could improve on plaintiffs' plan. But under the law, the task of fixing congressional districts must be borne by the Legislature. The task of the court is to determine whether the plan offends constitutional standards. The asserted grievances of these objectants relate primarily to the manner in which the lines have been drawn in the counties and communities in which they live and where they have their political aspirations and participation. These, they imply, have been seriously interfered with by the realignment. They argue that unnatural divisions of neighborhoods result. However, wherever there is a line, there will be those who live on one side and those who live on the other. Were the lines to be drawn differently, this situation would still obtain. There would be those aggrieved by any change.

The gross population disparities, which were the source of plaintiffs' original complaint and which brought about a declaration of unconstitutionality, have been remedies so that equality is to be found in regions logically selected for the various congressional districts. The Legislature cannot be expected to satisfy, by its redistricting action, the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side. The twenty or more identifiable communities of Brooklyn may well have preserved their own traditions from the days of the Dutch, although in today's rapidly changing world, this is doubtful. But even Brooklyn's large population will not support twenty community congressmen. Of necessity, there must be lines which divide.

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Since no proof has been submitted that the Legislature acted in contravention of the precepts of the Supreme Court with respect to congressional reapportionment, the objections of plaintiffs and objectants are overruled. The Legislature is now constitutionally constituted. In theory at least, the people of the State are being represented by senators and assemblymen of their choice. No matter how lines are drawn, some candidate of some party will always win, be his margin of victory ever so small. Under such circumstances, losing parties and candidates can always point to probable victories had the lines been drawn differently. Our constitutional system calls for rendering unto the Legislature the things that are the Legislature's. Reapportionment is one of such things. Were each political party, and factions within each party, permitted to by-pass the Legislature by asking the courts to foist upon the electorate districts of their own draftsmanship and choosing, representative government would no longer exist. Self-interest would be substituted for majority rule. The courts cannot become pawns in such a political chess game. Here, for example, the plaintiffs apparently represent the State Committee of the Liberal Party and some of the intervenors appear to be associated with reform or independent groups within the Democratic Party. Courts should not enter the political arena at the behest of any party or group. The legislative body may be composed of the representatives of many parties and factions but primarily, as a result of their election, they are the representatives of the people. The task of reapportionment is for the Legislature. Its task here under all the facts and circumstances cannot be said to have been unconstitutionally performed.

The plan, at least until the next census, will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts.

Settle judgment on notice.

## Judgment

## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF NEW YORK

66-C-1976

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 DAVID I. WELLS, et al.,
*Plaintiffs,*

—against— ....

NELSON A. ROCKEFELLER, et al.,

*Defendants.*


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A hearing having been held in open court on March 12, 1968 to hear challenges to the constitutionality of Chapter 8 of the New York Laws of 1968 and applications for intervention by Frederick W. Richmond, Eugene Victor, Armand J. Starace, Mary Leff, Kathryn Goldman, Andrew Cooper, Paul S. Kerrigan, Joan C. Bacchus, John R. Pillion, Samuel J. Popack, Simon Goldman, Shirley Levitan, Danny Carter, Israel Chanowitz, and Rabbi S. H. Fox,

Now, upon the filing of Chapter 8 of the Laws of 1968 of the State of New York and the Interim Report of the Joint Legislative Committee on Reapportionment, and all papers submitted with respect to said hearing and all papers and proceedings heretofore had herein, and after hearing Isidore Levine, Esq., for plaintiffs; and George D. Zuckerman, Assistant Attorney General, Robert Brady, Special Counsel for the Joint Legislative Committee on Reapportionment, and Donald Zimmerman, Consultant for the Temporary President of the New York State Senate, on behalf of the defendants and in support of the constitutionality of Chapter 8 of the Laws of 1968; and Ambrose Doskow, Esq., for intervenors F. W. Richmond, E. Victor and A. J. Star-

*Judgment*

ace; Edward J. Ennis, Esq., for intervenors Mary Leff and Kathryn Goldman; Milton H. Friedman, Esq., for intervenors Andrew Cooper, Paul S. Kerrigan and Joan C. Bacchus; John R. Pillion, Esq. pro se; and after reading the papers submitted by Gerald P. Halpern, Esq., for intervenors Samuel J. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H. Fox; and after filing the opinion of this Court dated March 20, 1968, it is

**ORDERED, ADJUDGED and DECREED**, that the objections to Chapter 8 of the New York Laws of 1968 raised by plaintiffs and by the above intervenors are denied in all respects, and it is further

**ORDERED, ADJUDGED AND DECREED**, that Chapter 8 of the Laws of 1968 of the State of New York, effective February 26, 1968, is in compliance with the order of this Court, dated July 26, 1967, and that the congressional districting plan set forth in said statute is in conformity with the requirements of the Constitution of the United States.

Dated: New York, N. Y.  
March 29, 1968.

(s) LEONARD P. MOORE

U.S.C.J.

(s) LLOYD F. MACMAHON

U.S.D.J.

(s) JOHN M. CANNELLA

U.S.D.J.

Judgment entered 4-1-68

JOHN J. OLEAR, JR.

Clerk



## Interim Report of the Joint Legislative Committee on Reapportionment

To accompany uni-bill (S. 3980; A. 5780) entitled:  
An act to repeal article seven of the state law,  
relating to the division of the state into con-  
gressional districts, and to insert a new article  
seven in such law, relating thereto.

Albany, New York, February 26, 1968

TO THE LEGISLATURE OF THE STATE OF NEW YORK:

The Joint Legislative Committee on Reapportionment created by concurrent resolution adopted March 15, 1965 and last continued until March 31, 1968, by concurrent resolution adopted May 15, 1967, submits the following interim report, relating to the creation of new Congressional districts.

### NECESSITY FOR THE CREATION OF NEW CONGRESSIONAL DISTRICTS

By an order of the United States District Court, Southern District of New York, dated July 26, 1967, Article VII, Section 111, Chapter 980 (L. 1961) was held unconstitutional as being contrary to Article I, Section 2 of, and the Fourteenth Amendment to the Constitution of the United States.

Chapter 980 of the Laws of New York of 1961 was enacted following the Congressional determination based on the 1960 decennial census reducing the number of Congressional districts in New York from forty-three to forty-one.

The District Court held that the present Act created undisputed disparities in New York's Congressional districts in violation of constitutional requirements as announced by the United States Supreme Court. Also, that on the basis of population inequality alone, the Act failed to meet constitutional standards. Readjustment of the Congressional districts was therefore required.

*Interim Report of the Joint Legislative Committee  
on Reapportionment*

**FEDERAL LAW REGULATING CONGRESSIONAL  
DISTRICTING WITHIN THE STATES**

In its opinion, the District Court, after citation of many authorities, elicited two basic principles to guide the Legislature in the performance of its function in redistricting: (1) That substantial equality of population among the several districts in the State is required; and (2) That the burden lies with the Legislature to justify the deviations from equality.

Substantial equality of population was dealt with in *Wesberry v. Sanders*, 376 U.S. 1 (1964). There, the United States Supreme Court held that the command of Article I, Section 2 of the United States Constitution means that as nearly as practicable one man's vote in a Congressional election is to be worth as much as another's. Though prior to that time, several standards had been explored, the Court in *Reynolds v. Sims*, stated that "*Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State."<sup>1</sup>

From *Wesberry* and from the reapportionment decisions delivered on January 9, 1967, most notable *Swann v. Adams* (Swann III), 385 U.S. 440 (1967), the District Court herein extracted the further principle that the burden of explanation lies with those who propose a plan rationally to explain deviations from substantial equality. Such justification or explanation take into consideration the "integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts, or recognition of natural or historical boundary lines."<sup>2</sup>

<sup>1</sup> 377 U.S. 533 at page 560-61.

<sup>2</sup> 385 U.S. 501 at page 504 (Lawyers Ed.).

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on Reapportionment*

While announcing the above two principles, and citing the numerous cases previously decided by other courts, the District Court in its opinion recognized the historic role of the Legislature in the redistricting process, concluding its opinion:

"Little guidance or help comes from these precedents. The easiest (for the court) solution is merely to direct the New York Legislature in 1968 to produce a constitutional plan. Let them use any available population figures they can muster; let them divide the State in 41 substantially equal parts, provided they be reasonable, compact and contiguous. Let them deliberate as free and independent legislators so long as they do not allow considerations of race, sex, economic status or politics to cross their minds. Then, when their handiwork is complete and is presented to us, we will have an opportunity to tell them whether they have articulated acceptable reasons for such variations as may exist."

**USE OF POPULATION STATISTICS IN DETERMINING SIZE OF DISTRICTS IN THIS BILL:**

**(a)**

This redistricting takes place some eight years after the decennial census of 1960. Justifiably, concern has been shown that the mobile population of New York State will not be given representation in this redistricting.

The Supreme Court of the United States dealt with this problem succinctly in *Reynolds v. Sims*, 377 U.S. 533, at page 583:

<sup>3</sup> *Wells v. Rockefeller*, page 15 (typewritten opinion).

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"Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period and also to the development of resistance to change on the part of some incumbent legislators. In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation. And we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable. But if reapportionment were accomplished with less frequency, it would assuredly be constitutionally suspect."

While mentioning the use of other than the Federal decennial census, the Court gave sanction to such use, and maintained the census in its historic position. Since 1788, the census has been constitutionally recognized and its primary role has been to count population for purposes of apportioning the number of Representatives in Congress to the several states.\* Used for many other valuable statistical and economic functions, it remains fundamentally the means for apportioning Representatives in Congress.

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\* Article I, Section 2, Subdivision 3.



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The timetable established by the decision of the District Court negated the possibility of a new statewide census. This is true, even though the funds and manpower could have been available. Practical considerations intervene. A statewide census would take the better part of a year, and to use such information would require a minimum of at least three months more.

In an effort to ascertain the extent of available statistics of sufficient accuracy, the committee canvassed all Boards of Supervisors, county governments and other local governments. Interim censuses conducted sporadically throughout the State have been conducted generally on the town level and represent only the enumeration required for various forms of federal and state aid. They are not specific enough for redistricting purposes. A publication of the Office of Local Government<sup>5</sup> indicates that only ten counties in the State have been completely counted since 1960 by special census. The specificity of such censuses has been limited to gross figures for political units and afford little help to the Committee in effecting the order of the District Court.

Generally, the enumerations indicate a flow from the city core to the suburbs, the so-called bedroom counties and towns. Such population change may reasonably give rise to concern on the part of such counties and towns that in this redistricting they will not receive due credit for their individual increases in population. It is also true that within the various cities and counties there has been movement. Such mobility, mercurial in nature, forces a practical brake on complete up-to-the-moment accuracy of enumeration. Those who go somewhere must come from somewhere. Accuracy for our purposes must reflect both gains and losses

<sup>5</sup> "Population changes since 1960, as shown by special United States census results." December 1966.

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in order to determine distribution of the population of the State, and in the end, representation in Congress.

The dangers inherent in the use of statistics not complete were evident in the recent Ohio redistricting, wherein partially new population results were combined with 1960 results. The work of the legislature was negated by the Supreme Court of the United States and remanded to the District Court for further action.<sup>6</sup>

While other methods of determining a base for redistricting have been used and accepted, the nature of New York State's problem did not lend itself to such solutions, which, although ingenious, are effective when employed on a small scale, with a small number of seats to be distributed.

The considered judgment of the Committee was that the 1960 decennial census information, together with the mechanical paraphernalia developed from such information, should be used as the basis for this redistricting. Parenthetically, such information was used in the "Plan A" reapportionment in 1965 for the State Legislature, and in 1966 by the Judicial Commission on Reapportionment under order of the New York Court of Appeals.<sup>7</sup>

Some consideration, though very limited, was given to the distribution of areas of increased population among the various Congressional districts. However, such consideration was marginal and highly limited by geographical locations, and the bald mathematics of available census information. Elsewhere in the report, the major factors are examined in detail.

<sup>6</sup> *Lucas v. Rhodes, per Curiam*, U. S. Supreme Court, December 4, 1967.

<sup>7</sup> Laws of 1964, chapter 976; *Matter of Orans*, order entered February 23, 1966.

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(b)

The Committee noticed a material difference between the 1960 Federal Census figures published in the statute in question and the figures as cited by the petitioners in this action. The population figures cited by the petitioners were taken from a publication of the Bureau of the Census, containing, among other data, the vote cast by major party for President and for Representative in 1962, the population of the Congressional district, the type of residence, the race and nativity, and the age and sex—all delineated by Congressional district. Appendix C is a chart showing the differences between the statute and the Census publication. All the differences in totals occur in those counties where there is a confused conglomeration of streets. Both sets of totals are taken from certified census figures, but those of the Committee were transferred to maps, block by block. The records of the Committee show that, as late as August 18, 1961, several of the blocks were revised as to population, by the Bureau of the Census, that the certified figures were entered in the proper books and were placed correctly upon the Committee's maps.

Further analysis shows that where the population of whole counties or towns compose the total population of the Congressional district no difference is found. To the above observation, only two exceptions can be found. In Manhattan where the streets are north-south, east-west, no variation was found; and in Monroe (really the city of Rochester) where the Genesee river is the dividing line for both the Congressional districts and the census tracts, no variations may be found. Analysis shows the variations in Kings and Queens to be found on the mainland. In each case, the variations balance themselves out within the county. In the Twenty Ninth and Thirtieth districts, where the so-called "River Wards" of the city of Troy are involved, a difference can be noted. Finally, the three districts in Erie county,

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(Thirty Ninth, Fortieth, and Forty First Congressional districts) show differences.

The only conclusion that could be drawn by the Committee is that we must work with the materials already prepared, prove and describe the districts with the Committee maps containing the certified figures, and to treat the variations shown in the Census publication as being *de minimis*.<sup>\*</sup>

**THE EMERGENT NATURE OF THE  
REDISTRICTING**

The Court is alive to the problem of using already out-moded population figures. It is also impelled to correct a statute which it has declared to be unconstitutional. With the present projections of population nationwide, New York State will in all probability lose another seat in Congress after the decennial census in 1970. The Legislature will be faced with the same problem of readjusting the Congressional districts again, thereby limiting the 1961 now unconstitutional readjustment to ten years, or five elections. Since the Court has ordered the 1968 general election to be held under the new redistricting, two out of the five elections (40%) will be held in districts with corrected representation.

Under the laws of the State of New York, a system of permanent personal registration applies throughout the state.<sup>\*</sup> When a Congressional district line breaks through

<sup>\*</sup> See Silva, Ruth C., "The Population Base for Apportionment of the New York Legislature", 32 Fordham Law Review 1. While this is a discussion of the problems inherent in population base for a state legislature many of the same problems and considerations apply to Congressional redistricting.

<sup>\*</sup> Election Law 1967, Section 350 (2).



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or "splits" an established election district line, several corrective measures must be taken by the Board of Elections in charge:

- (1) all those persons living in that part of the district which is changed must be notified individually;
- (2) the Board of Elections has the option to attach the detached part of the district to an existing district or to create a new one; and
- (3) the records must be changed to conform to the option selected by the Board of Elections.<sup>10</sup>

All the above measures must be completed in time for the circulation of petitions for designation in the party primary elections. The date for primary election is June 18th. The first day to circulate petitions is April 2, 1968. A short time is left for the Court to validate, amend, or reject the proposed statute.

For all of the above reasons, an earnest attempt has been made to follow election district lines where at all possible, to reduce the work of the individual Boards of Elections to a minimum. In only one instance was the decision made to split an election district for "cosmetic" reasons—the resulting line otherwise was tortuous. It is however the only split district in Queens, and the only work that the board must do.<sup>11</sup>

Because of the requirement (self-imposed), not to split or break election districts, the lines of many of the districts, which in the abstract or in preliminary planning were straight, are perforce jagged. The motive was to prevent

<sup>10</sup> See Election Law 1967, Section 362 *et seq.*

<sup>11</sup> The number of split election districts in the state would seem to total some sixteen: Nassau, four; Queens, one; New York, six; and Bronx, five.

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and the preliminary preparatory work by the Boards of Elections, and to provide a quick and least-confusing turn-over when and if this bill becomes a law.

**THE METHOD OF REDISTRICTING EMPLOYED  
BY THE COMMITTEE**

In interpreting the decision of the District Court, together with the relevant decisions of the United States Supreme Court, the Committee gave priority to the population totals in the several districts. Other considerations were the geographical conformation of the area to be districted, the maintenance of county integrity, the facility by which the various Boards of Elections can "tool up" for the forthcoming primary election, equality of population within the region, and equality of population throughout the state.

The State of New York most naturally divides into regions. Population, interest, finances, a charter custom and history—all tend to separate the City of New York from the rest of the state.<sup>12</sup>

The rest of Long Island then becomes an entity unto itself. The counties of Suffolk and Nassau are geographically isolated, if the original decision is to maintain New York City Congressional districts within the city. As noted by the decision of District Court,

"Basically, however, the Committee did divide the population of the State into 41 parts which produced a hypothetical population figure of 409,326 (sic!) per part. It then separated New York City with its

<sup>12</sup> It has one Board of Elections for the whole five counties, comprising the city. The only city so to be organized politically.

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population of 7,781,984 from the rest of the State. Assigning 19 districts to New York City, an average population per district of 409,109 resulted."<sup>13</sup>

The Committee saw no reason to change that decision. All plans that have been submitted to the court or to this committee recognize the separability of New York City.

In the Nassau-Suffolk area the districts were equalized around a quota obtained by dividing the combined population of Nassau and Suffolk counties by five, to give a quota of 393,391. The First, Third, Fourth and Fifth districts were changed to bring the Second district population up to quota.

The City of New York divides into geographical segments. The 1961 statute here in question added a part of Queens county (the Rockaways) separated by water, to a district in the county of Kings (10th Congressional district). The possibility of adding more of Queens county to that district or another district was considered, thereby making Queens, Kings and Richmond counties one quota group. Coloring all ideas of absolute population equality, the facts that the redistricting must take place this year, be part of the primary elections, and that the voters in the several districts must have the opportunity to vote for the candidate of their choice with the least amount of confusion—all consistent with the guidelines set by the Court—led to the Committee's decision in this area.

It was the Committee's decision that the county of Queens should retain its essential characteristics. The Rockaways were to be joined, as now, with the county of Kings, and the rest of Queens county was divided into four essentially equally populated parts. (Sixth through Ninth Congressional districts.)

<sup>13</sup> Wells, etc. v. Rockefeller, page 3 (typewritten opinion).

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The population of the Rockaways, some 70,891 people, added to those of the counties of Kings and Richmond, produces a quota of 417,171 for the next seven districts. (Tenth through Sixteenth Congressional districts.)

Many of the problems forcing the decision herein center in Kings county. In fact, it would seem that the gravamen of the Court's decision that the statute is unconstitutional lies in the fact that the Twelfth and Fifteenth Congressional districts contained such a disparity in population. The Court also noted that the Sixteenth Congressional district, composed of all of the county of Richmond and a part of the county of Kings located on Jamaica Bay, could only be reached by going through several other districts.

The movement of the Sixteenth district (Kings section) from its present position on Jamaica Bay to the vicinity of the Verrazano-Narrows Bridge necessitated the redistricting of the whole of Kings County. The effect of the changes in Kings county was to remove a section from the center of Brooklyn to change that district to the left center of the county. Even were all the districts equal, (and they were not), the redistricting of Kings county was of necessity total.

New York county and Bronx county presented a different problem, because the population of the Bronx is not sufficient in and of itself to support four Congressman. In combination with New York county, however, it can support three full districts and part of another Congressional district. The combined population of New York and Bronx counties produces a quota of 390,387 for eight Congressmen. The Manhattan and Bronx districts were adjusted according to this figure.

Using the above quota in the Manhattan four full districts, the remainder, added to a partial district in the Bronx, comes to approximately 136,500 plus or minus a



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small variance. With respect to the options available respecting this particular "fall-off" from Manhattan, the Committee had to consider several major factors, other than population equality; for population equality could have been achieved in a number of ways.

The Bronx could have been joined to Manhattan at two points; at one point in East Harlem where a present State Senate district joins; or, at one point at the Spuyten Duyvil end of the island. The most significant feature of the geography of Manhattan island (to the Committee) is that it runs roughly in a strip, four or five blocks wide, from West 150th Street to West 225th Street. Because both the Eighteenth and Twentieth Congressional districts join at that neck, each of the options discussed had to be viewed from the effect that the individual "take-out" would have upon that strip of land.

A block of 136,000 people taken out of East Harlem would have the effect of running the Eighteenth and the Twentieth districts side-by-side virtually the whole length of the strip in discussion.<sup>14</sup>

If the same block were taken in two pieces, divided between the Inwood Section and East Harlem, the result would be to reduce the length of the joint tenancy of the strip somewhat, but such joint tenancy would be substantial and would present the same drafting problems.<sup>15</sup>

Because these two options presented problems of configuration in Manhattan, the final decision was made to join the district at the tip of Manhattan and to give access

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<sup>14</sup> This would run about to Nagle Avenue, provided some territory were taken from the 20th below around Cathedral Parkway, and almost to Marble Hill if none were taken below.

<sup>15</sup> The 18th would run up to about West 175th Street, if again there were some people taken from the bottom section of the 20th, and to about West 185th Street if none were taken.

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to the district across the many bridges that span the Harlem River.<sup>16</sup>

Westchester County plus Putnam County contains presently two districts, one of which contains 438,409 (the 25th Congressional district) and the other, 402,204 (the 26th Congressional district). Two options were available; one, to transfer the county of Putnam to the 28th district; and the other, to make an adjustment between the two districts by altering the line somewhere along the north-south line between the Twenty Fifth and the Twenty Sixth in Westchester county. The second choice has the obvious advantage of disturbing only two districts already in being, and of adding a relatively small area in Westchester to the Twenty Sixth district. It is for that reason that the Committee chose the latter alternative, and accomplished his by taking one full ward and three election districts of another ward in the city of Yonkers.

The remaining changes were to remove the portion of the county of Rensselaer from the Twenty Ninth district, thereby making that district solely the counties of Albany and Schenectady. Thereafter, by removing the county of Clinton from the Thirtieth district and adding it to the Thirty First district, all the Congressional districts in the North country were made into districts composed of groupings of whole counties. In the rest of the State, only two other counties are divided.

In the middle North, along Lake Ontario, the county of Monroe is divided along the Genesee river and the two parts are joined to surrounding counties to make equal districts, close to the State mean.

<sup>16</sup> There was no intention to designate any bridge as access since the obvious access is the Henry Hudson bridge or the 225th Street bridge where Broadway crosses from Manhattan into the Marble Hill section of New York County (on the Bronx side of the Harlem River).

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The only other county divided is the county of Erie. By economic development and natural resources, the counties of Niagara and Erie are joined in the Niagara Frontier. Various Federal and State projects use this region as a unit. The three districts in the Niagara Frontier are substantially equal in population under the 1960 Federal census. For that reason the Committee saw no substantial reason to change the lines in those districts.

The foregoing procedures resulted in the plan, proposed in the present bill, wherein the largest district will contain 435,880 people and the smallest district will contain 382,277 people. This results in a citizen population variance of 1.139 to 1, and a maximum deviation from the state mean of 409,324 is 6.608%.

Chapter 960, Laws of 1961, the statute herein involved, resulted in a citizen population variance of 1.345 to 1, and a maximum deviation from the state mean of 15.1%.

### CONCLUSION

Because of the necessity to use the 1960 Federal census figures, and because of their inaccuracy in view of the mobility of New York State's population, the Committee changed as few districts as possible consistent with the opinion of the District Court. The Committee is mindful that the present redistricting is by its nature temporary, since the 1970 Federal Decennial Census will, in any event, change all basic figures.

In view of the above considerations, the Committee attempted to remove the inequities as they existed and at the same time to minimize the extent of the dislocation and confusion which necessarily attends any redistricting effort.

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The appendices, attached hereto, show the following:

- A. Population, 1960 Federal Census, by Counties and Ratio of Congressmen Allotted to each County.
- B. Population of each Congressional District in Redistricting Bill, 1960 Federal Census; Deviation from State Mean; and Short Description of each District.
- C. Chart showing Variation between Population used in Laws 1961, Ch. 980, and Subsequent Publication by Bureau of Census, together with areas of disagreement.

The Committee wishes to thank the staff who worked long and hard to make this bill possible. They were persevering, thorough, and endlessly patient in the performance of their duties. The Committee would have been unable to function without the dedication of its staff.

**LOUIS F. DESALVIO,**  
Chairman

**JOHN H. HUGHES**

**WILLIAM J. FERRALL,**  
Vice Chairman

**ROBERT F. KELLY**

**JOHN HART TERRY,**  
Secretary

**HARRY KRAF**

**WARREN ANDERSON**

**SIDNEY LEBOWITZ**

**JOHN D. CAEMMERER**

**RONALD B. STAFFORD**

**FRANK P. COX**

**Members**

Dated: Albany, New York, February 26, 1968.



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**APPENDIX "A"—STATE MEAN, 409,324**

**NEW YORK STATE**

**TOTAL POPULATION BY COUNTIES—16,782,304—  
FEDERAL 1960 CENSUS**

<i>County</i>	<i>Population</i>	<i>Ratio</i>
Albany	272,926	0.667
Allegany	43,978	0.107
Bronx	1,424,815	3.481
Broome	212,661	0.520
Cattaraugus	80,187	0.195
Cayuga	73,942	0.181
Chautauqua	145,377	0.355
Chemung	98,706	0.241
Chenango	43,243	0.106
Clinton	72,722	0.178
Columbia	47,322	0.116
Cortland	41,113	0.100
Delaware	43,540	0.106
Dutchess	176,008	0.430
Erie	1,064,688	2.601
Essex	35,300	0.086
Franklin	44,742	0.110
Fulton	51,304	0.125
Genesee	53,994	0.132
Greene	31,372	0.077
Hamilton	4,267	0.010
Herkimer	66,370	0.162
Jefferson	87,835	0.215
Kings	2,627,319	6.419
Lewis	23,249	0.057
Livingston	44,053	0.108
Madison	54,635	0.133
Monroe	586,387	1.143
Montgomery	57,240	0.140
Nassau	1,300,171	3.176

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<b>County</b>	<b>Population</b>	<b>Ratio</b>
New York	1,698,281	4.149
Niagara	242,269	0.592
Oneida	264,401	0.646
Onondaga	423,028	1.033
Ontario	68,070	0.166
Orange	183,734	0.449
Orleans	34,159	0.083
Oswego	86,118	0.210
Otsego	51,942	0.127
Putnam	31,722	0.077
Queens	1,809,578	4.421
Rensselaer	142,583	0.348
Richmond	221,991	0.542
Rockland	136,803	0.334
St. Lawrence	111,239	0.272
Saratoga	89,096	0.218
Schenectady	152,896	0.374
Schoharie	22,616	0.055
Schuyler	15,044	0.037
Seneca	31,984	0.078
Steuben	97,691	0.239
Suffolk	666,784	1.629
Sullivan	45,272	0.111
Tioga	37,802	0.092
Tompkins	66,164	0.161
Ulster	118,804	0.290
Warren	44,002	0.107
Washington	48,476	0.118
Wayne	67,989	0.166
Westchester	808,891	1.976
Wyoming	34,793	0.083
Yates	18,614	0.045

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**APPENDIX "B"—STATE MEAN 409,324**

<i>C.D.</i>		<i>Dev. %</i>	<i>Description</i>
1	393,585	— 3.845	Part of Suffolk
2	393,465	— 3.874	Part of Suffolk, Part of Nassau
3	393,434	— 3.882	Part of Nassau
4	393,183	— 3.943	Part of Nassau
5	393,288	— 3.918	Part of Nassau
6	434,615	+ 6.178	Part of Queens
7	434,750	+ 6.212	Part of Queens
8	434,552	+ 6.163	Part of Queens
9	434,770	+ 6.217	Part of Queens
10	417,122	+ 1.905	Part of Queens, Part of Kings
11	417,090	+ 1.897	Part of Kings
12	417,298	+ 1.948	Part of Kings
13	417,040	+ 1.885	Part of Kings
14	417,080	+ 1.895	Part of Kings
15	417,090	+ 1.898	Part of Kings
16	417,478	+ 1.992	Richmond, Part of Kings
17	390,742	— 4.540	Part of New York
18	390,861	— 4.511	Part of New York
19	390,023	— 4.715	Part of New York
20	390,363	— 4.632	Part of New York
21	390,532	— 4.586	Part of New York, Part of Bronx
22	390,492	— 4.601	Part of Bronx
23	390,228	— 4.665	Part of Bronx
24	390,057	— 4.707	Part of Bronx
25	420,146	+ 2.644	Putnam, Part of Westchester
26	420,467	+ 2.722	Part of Westchester
27	409,349		Rockland, Orange, Sullivan, Delaware
28	396,122	— 3.225	Dutchess, Ulster, Columbia, Greene, Schoharie
29	425,822	+ 4.031	Albany, Schenectady
30	415,030	+ 1.394	Rensselaer, Saratoga, Washington, Warren, Fulton, Hamilton, Essex
31	425,905	+ 4.051	Clinton, St. Lawrence, Jefferson, Lewis, Franklin, Oswego

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C.D.	Pop.	Dev. %	Description
32	385,406	- 5.843	Oneida, Madison, Herkimer
33	415,333	+ 1.468	Chemung, Broome, Tioga, Tompkins
34	423,028	+ 3.348	Onondaga
35	386,148	- 5.662	Ontario, Yates, Seneca, Cayuga, Cortland, Chenango, Otsego, Montgomery
36	410,943	+ 0.396	Part of Monroe, Wayne
37	410,432	+ 0.271	Part of Monroe, Orleans, Genesee, Wyoming, Livingston
38	382,277	- 6.608	Chautauqua, Cattaraugus, Allegany, Steuben, Schuyler
39	435,393	+ 6.369	Part of Erie
40	435,684	+ 6.440	Part of Erie, Niagara
41	435,880	+ 6.488	Part of Erie

State Mean	409,324
Largest District (41st C.D.)	435,880
Smallest District (38th C.D.)	382,277
Citizen Population Variance (Largest district population divided by the smallest district population)	1.139 to 1
Maximum Deviation above State Mean	6.488 %
Maximum Deviation below State Mean	6.608 %
Minimum Percentage of Citizen Population Required to Elect Majority of Delegation *	49.373 %

\* This is a more meaningful statistic when measured against the election of a state legislature and when election then becomes control of the body. Here we are dealing with less than ten percent of the whole body. Yet as a measure it performs a useful function.



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**APPENDIX "C"**

<b>C.D.</b>	<b>Laws 1961, Ch. 980</b>	<b>Bureau of Census Publication</b>	<b>Difference *</b>	<b>County</b>
2	371,950	372,645	- 695	Nassau
3	399,967	399,067	+ 900	
4	394,494	393,811	+ 688	
5	402,290	403,178	- 888	
6	416,600	417,367	- 767	Queens
7	457,124	459,844	- 2720	
8	438,192	432,776	+ 5416	
9	426,771	428,700	- 1929	Kings
10	424,617	422,745	+ 1872	
11	403,628	403,790	- 162	
12	469,908	471,001	- 1093	
13	454,285	455,172	- 887	
14	465,889	463,957	+ 1932	
15	349,850	350,635	- 785	Bronx
16	352,024	352,901	- 877	
21	361,770	361,069	+ 701	
22	355,847	359,751	+ 3904	
23	358,258	353,809	+ 4449	
24	348,940	350,186	- 1246	
29	453,165	452,826	+ 339	Rensselaer
30	460,409	460,748	- 339	
39	435,393	436,243	- 850	Erie
40	435,684	435,282	+ 402	
41	435,880	435,432	+ 448	

\* Legend: + means 1961 figure is the higher.  
- means 1961 figure is the lower.

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**STATE OF NEW YORK**

**S. 3980**

**A. 5780**

**SENATE—ASSEMBLY**

**FEBRUARY 20, 1968**

**IN SENATE**—Introduced by **COMMITTEE ON RULES**—  
(at the request of Messrs. **HUGHES** and **FERRALL**)—  
read twice and ordered printed, and when printed to be  
committed to the Committee on Rules.

**IN ASSEMBLY**—Introduced by **COMMITTEE ON RULES**—  
(at the request of Messrs. **DeSALVIO** and **TERRY**)—  
read once and referred to the Committee on Rules

**AN ACT**

To repeal article seven of the state law, relating to the  
division of the state into congressional districts, and to  
insert a new article seven in such law, relating thereto

*The People of the State of New York, represented in  
Senate and Assembly, do enact as follows:*

Section 1. Article seven of the state law is hereby  
repealed and a new article seven inserted in lieu thereof,  
to read as follows:

**ARTICLE SEVEN**

**CONGRESSIONAL DISTRICTS**

- Section 110. Present congressional districts.
- 111. New congressional districts.
- 112. Definitions.

§ 110. Present congressional districts. The congressional districts of this state, as existing immediately before the time this article takes effect, shall continue to be the

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congressional districts of the state until the expiration of the terms of the representatives in congress then in office, except for the purpose of an election of representatives in congress for full terms beginning at such expirations.

§ 111. New congressional districts. Except as provided in section one hundred ten, the congressional districts of this state from and after the time this article takes effect, shall consist as follows: (Figures in parenthesis represent population according to the 1960 Federal Decennial Census.)

First Congressional district. That part of the county of Suffolk described as follows: The towns of East Hampton, Southold, Southampton, Riverhead, Brookhaven, Smithtown and Islip; except, that part of the town of Islip beginning at a point where Sunrise highway intersects the town line of Islip and Babylon, then along Sunrise highway to Higbie lane, to Montauk highway (South Country road), to Robert Moses causeway, then southerly on Robert Moses causeway to the waters of the Great South bay, then westerly through the waters of the Great South bay and Great Cove to the dividing line of the towns of Islip and Babylon, then northerly along said dividing line to the point of beginning; the Shinnecock Indian reservation and the islands of Shelter island, Gardiner's island, Fisher's island and all islands within the above mentioned townships. (393,585)

Second Congressional district. That part of the county of Suffolk described as follows: The towns of Huntington, Babylon and that part of the Town of Islip beginning at a point where Sunrise highway intersects the town line of Islip and Babylon, then along Sunrise highway to Higbie lane, to Montauk highway (South Country road), to Robert

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Moses causeway, then southerly on Robert Moses causeway to the waters of the Great South bay, then westerly through the waters of the Great South bay and Great Cove to the dividing line of the towns of Islip and Babylon, then northerly along said dividing line to the point of beginning; and

That part of the county of Nassau in the towns of Oyster Bay and Hempstead described as follows: Beginning at the intersection of the Suffolk-Nassau county line and the waters of Cold Spring Harbor, then along the Suffolk-Nassau county line to Northern State parkway, to Wantagh-Oyster Bay expressway, to Phipps lane, to Wallace drive, to Southern parkway, to Wantagh-Oyster Bay expressway, to Old Country road, to Grohman's lane, to Lincoln Road North, to Lincoln Gate, to Old Country road, to Barnum avenue, to Stone road, to Belmont avenue, then along Belmont avenue to its intersection with Stewart street and Eileen avenue, then along Eileen avenue to Floral avenue, to Lex avenue, to Deb street, to MacArthur avenue, to Gates avenue, to Locust avenue, to Pine avenue, to Floral avenue, to Farmers avenue, then along Farmers avenue to its intersection with Allan Gate and Manor drive, then along Manor drive to Silbert avenue, to Cherry avenue, to Stewart avenue, then along Stewart avenue to its intersection with the tracks of the main line of the Long Island Railroad, then along said tracks to its intersection with Bethpage State parkway, then along Bethpage State parkway, to Southern State parkway, to North Broadway, to North Hickory street, to Summit drive, to North Chestnut street, then along North Chestnut street and North Chestnut street extended through Massapequa Park to the west village line of the village of Massapequa Park, then along said village line to Jerusalem avenue, then along Jerusalem avenue to its intersection with the Hempstead-Oyster Bay



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town line, then along said town line to Merrick road, then along Merrick road to its intersection with Bellmore canal extended to Merrick road, then along Bellmore canal extended and Bellmore creek to Kopf road extended, then along Kopf road extended and Kopf road to Bellmore avenue, to South St. Marks avenue, then westerly along South St. Marks avenue to Boundary lane, to Gace court, to Island plaza, then along Island plaza and Island plaza extended into the waters of Newbridge creek, then through said waters to its intersection with Philip court extended, then along Philip court extended and Philip court, to Walters court, to Hewlett lane, then along Hewlett lane and Hewlett lane extended into Grand View canal, then through the waters of Grand View canal, Baldwin creek, East bay, Horserace channel and Sloop channel to its intersection with the Oyster Bay-Hempstead town line then easterly through said waters to the Nassau-Suffolk line, then along said line to the point of beginning.

(Suffolk Part 273,199; Nassau Part 120,266—393,465)

Third Congressional district. In the county of Nassau described as follows: The town of North Hempstead and that part of the town of Oyster Bay beginning at the intersection of the Suffolk-Nassau county line and the waters of Cold Spring harbor, then along the Suffolk-Nassau county line to Northern State parkway, to Wantaugh-Oyster Bay expressway, to Phipps lane, to Wallace drive, to Southern parkway, to Wantaugh-Oyster Bay expressway, to Old Country road, to Grohman's lane, to Lincoln Road North, to Lincoln Gate, to Old Country road, to Barnum avenue, to Stone road, to Belmont avenue, then along Belmont avenue to its intersection with Stewart street and Eileen avenue, then along Eileen avenue to Floral avenue, to Lex avenue, to Deb street, to MacArthur avenue, to Gates ave-

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nue, to Locust avenue, to Pine avenue, to Floral avenue, to Farmers avenue, then along Farmers avenue to its intersection with Allan Gate and Manor drive, then along Manor drive to Silbert avenue, to Cherry avenue, to Stewart avenue then along Stewart avenue to its intersection with the tracks of the main line of the Long Island railroad, then along said tracks to its intersection with Bethpage State parkway, to Hempstead turnpike, then along Hempstead turnpike to its intersection with the Oyster Bay-Hempstead town line, then northerly and westerly along said town line and the Oyster Bay-North Hempstead town line to the waters of Hempstead harbor, then through said waters and the waters of Long Island sound and Cold Spring harbor to the point of beginning. (393,434)

Fourth Congressional district. That part of the county of Nassau described as follows: That part of the towns of Hempstead and Oyster bay beginning at the intersection of the Nassau-Queens county line with the northerly village line of the village of Valley Stream, then easterly along said village line to its intersection with the westerly village line of the village of Malverne, then northerly and easterly along said village line to its intersection with Southern State parkway, then easterly along Southern State parkway to Jerusalem avenue, to the intersection of Jerusalem avenue with the westerly village line of the village of Massapequa park, then northerly along said village line to its intersection with North Chestnut street extended across Massapequa State park, then along North Chestnut street extended and North Chestnut street to Summit drive, to North Hickory street, to North Broadway, to Southern State parkway, to Bethpage State parkway, to Hempstead turnpike, then along Hempstead turnpike to its intersection with the Hempstead-Oyster Bay town lines, then northerly, westerly and southerly along the Hempstead-Oyster Bay

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town line, the Hempstead-North Hempstead town line and the Nassau-Queens county line to the point of beginning.

(393,183)

Fifth Congressional district. That part of the county of Nassau described as follows: That part of the towns of Oyster Bay and Hempstead beginning at the intersection of the Nassau-Queens county line with the northerly village line of the village of Valley Stream, then easterly along said village line to its intersection with the westerly village line of the village of Malverne, then northerly and easterly along said village line to its intersection with Southern State parkway, then easterly along Southern State parkway to Jerusalem avenue, to the intersection of Jerusalem avenue with the Oyster Bay-Hempstead town line, then southerly along said town line to its intersection with Merrick road, then along Merrick road to its intersection with Bellmore canal extended to Merrick road, then along Bellmore canal extended and Bellmore creek to Kopf road extended, then along Kopf road extended and Kopf road to Bellmore avenue, to South St. Marks avenue, then westerly along South St. Marks avenue to Boundary lane, to Gace court, to Island plaza, then along Island plaza and Island plaza extended into the waters of Newbridge creek, then through said waters to its intersection with Philip court extended, then along Philip court extended and Philip court, to Walters court, to Hewlett lane, then along Hewlett lane and Hewlett lane extended into Grand View canal, then through the waters of Grand View canal, Baldwin creek, East bay, Horserace channel and Sloop channel to its intersection with the Oyster Bay-Hempstead town line then southerly along said line to its intersection with the waters of the Atlantic ocean, then westerly through said waters to the Nassau-Queens line, then along said line to the point of beginning.

(393,288)

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**Sixth Congressional district.** That part of the county of Queens described as follows: Beginning at a point where One Hundred Thirty Sixth avenue intersects the county line between Queens county and Nassau county, then along One Hundred Thirty Sixth avenue to Brookville boulevard, to One Hundred Thirty Fifth avenue, to Laurelton parkway, to One Hundred Thirty Third avenue, to Two Hundred Thirtieth street, to Merrick boulevard, to Two Hundred Eighteenth street, to One Hundred Thirty Third road, to Springfield boulevard, to Murdock avenue, to Colfax street, to Hollis avenue, to Jamaica avenue, to Merrick boulevard, to Archer avenue, to Van Wyck expressway, to Atlantic avenue, to One Hundred Twenty Seventh street, to Atlantic avenue, to Woodhaven boulevard, to Park Lane south, to Ninety Eighth street, to Woodhaven boulevard, to Myrtle avenue, to Eightieth street, to Metropolitan avenue, to Sixty Ninth avenue, to Burns street, to Union turnpike, to Queens boulevard, to Main street, to Eighty Fifth drive, to One Hundred Forty Fourth street, to Eighty Fifth avenue, to One Hundred Forty Eighth street, to Eighty Fourth drive, to Smedley street, to Grand Central parkway, to One Hundred Sixty Fourth street, to Union turnpike, along Union turnpike, to Hollis Court boulevard, to Richland avenue, to Peck avenue, to Bell boulevard, to Kingsbury avenue, to Springfield boulevard, to Sixty Ninth avenue, to Cloverdale boulevard, to Long Island expressway, along Long Island expressway to Peck avenue, to Fresh Meadow lane, to North Hempstead turnpike, to Main street, to Long Island expressway, to Rodman street, along Rodman street to Booth Memorial avenue and One Hundred Thirty Third street, along One Hundred Thirty Third street to Elder avenue, to Peck avenue, to Main street, to Elder avenue, to Kissena boulevard, to Forty Fifth avenue, to Parsons boulevard, to Bayside avenue, along Bayside ave-



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nue, to Bayside lane, to Francis Lewis boulevard, to Twenty Fourth road, to Utopia parkway, to Twenty Fourth avenue, to Two Hundred First street, to Twenty Third avenue, to Two Hundred Seventh street, to Twenty Sixth avenue, to Bell boulevard, to Twenty Fourth avenue, along Twenty Fourth avenue and Twenty Fourth avenue extended to and through the waters of Little Neck bay to the Queens-Nassau county line, then along said county line to the place of beginning. (434,615)

Seventh Congressional district. That part of the county of Queens described as follows: Beginning at a point where One Hundred Thirty Sixth avenue intersects the county line between Queens county and Nassau county, then along One Hundred Thirty Sixth avenue to Brookville boulevard, to One Hundred Thirty Fifth avenue, to Laurelton parkway, to One Hundred Thirty Third avenue, to Two Hundred Thirtieth street, to Merrick boulevard, to Two Hundred Eighteenth street, to One Hundred Thirty Third road, to Springfield boulevard, to Murdock avenue, to Colfax street, to Hollis avenue, to Jamaica avenue, to Merrick boulevard, to Archer avenue, to Van Wyck expressway, to Atlantic avenue, to One Hundred Twenty Seventh street, to Atlantic avenue, to Woodhaven boulevard, to Park Lane south, to Ninety Eighth street, to Woodhaven boulevard, to Myrtle avenue, to Eightieth street, to Cooper avenue, to Sixty Ninth avenue, to Seventy Eighth street, to Metropolitan avenue, to Seventy Fourth street, to Juniper boulevard south, to Seventh First street, to Lutheran avenue, to the intersection of Eliot avenue, Lutheran avenue and Seventy Fifth street, along Seventy Fifth street, to Caldwell avenue, to Seventy First street, to Long Island expressway, to Grand avenue, along Grand avenue, to Sixty Fourth street, to Fifty Ninth drive, to Sixtieth avenue, to Fresh Pond road, to Eliot avenue, to Metropolitan avenue,

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along Metropolitan avenue to the dividing line between Queens county and Kings county, along said dividing line to the waters of Jamaica bay, through the waters of Jamaica bay, Grassy bay and Head of Bay inlet to the Queens-Nassau county line, then along said dividing line to the place of beginning. (434,750)

Eighth Congressional district. That part of the county of Queens described as follows: Beginning at a point where Twenty Third avenue extended intersects the waters of Flushing bay, then along Twenty Third avenue extended and Twenty Third avenue to Grand Central parkway, to Ninety Fourth street, to Thirtieth avenue, to Ninety Third street, to Northern boulevard, to Junction boulevard, to Fifty Seventh avenue, to Ninety Ninth street, to Sixty Third road, to the intersection of Junction boulevard, Sixty Third road, Sixty Third drive and Queens boulevard, along Queens boulevard to Fifty First avenue, to Sixty Ninth street, to the intersection of Grand avenue, Sixty Ninth street, and Long Island expressway, along Long Island expressway to Seventy First street, to Caldwell avenue, to Seventy Fifth street, to the intersection of Eliot avenue, Seventy Fifth street and Lutheran avenue, along Lutheran avenue, to Seventy First street, to Juniper boulevard south, to Seventy Fourth street, to Metropolitan avenue, to Seventy Eighth street, to Sixty Ninth avenue, to Eightieth street, to Metropolitan avenue, to Sixty Ninth avenue, to Burns street, to Union turnpike, to Queens boulevard, to Main street, to Eighty fifth drive, to One Hundred Forty Fourth street, to Eighty Fifth avenue, to One Hundred Forty Eighth street, to Eighty Fourth drive, to Smedley street, to Grand Central parkway, to One Hundred Sixty Fourth street, to Union turnpike, along Union turnpike to Hollis Court boulevard, to Richmond avenue, to Peck avenue, to Bell boulevard, to Kingsbury avenue, to Springfield boulevard,

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to Sixty Ninth avenue, to Cloverdale boulevard, to Long Island expressway, along Long Island expressway to Peck avenue, to Fresh Meadow lane, to North Hempstead turnpike, to Main street, to Long Island expressway, to Rodman street, along Rodman street to the intersection of Booth Memorial avenue and One Hundred Thirty Third street, along One Hundred Thirty Third street to Elder avenue, to Peck avenue, to Main street, to Elder avenue, to Kissena boulevard, to Forty Fifth avenue, to Parsons boulevard, to Bayside avenue, along Bayside avenue to Bayside lane, to Francis Lewis boulevard, to Twenty Fourth road, to Utopia parkway, to Twenty Fourth avenue, to Two Hundred First street, to Twenty Third avenue, to Two Hundred Seventh street, to Twenty Sixth avenue, to Bell boulevard, to Twenty Fourth avenue, along Twenty Fourth avenue and Twenty Fourth avenue extended to and through the waters of Little Neck bay to the Queens-Nassau county line, then northerly through the waters of Little Neck bay, East river and Flushing bay to the place of beginning. (434,552)

Ninth Congressional district. That part of the county of Queens described as follows: Beginning at a point where Twenty Third avenue extended intersects the waters of Flushing bay, then southwesterly along Twenty Third avenue extended and Twenty Third avenue, to Grand Central parkway, to Ninety Fourth street, to Thirtieth avenue, to Ninety Third street, to Northern boulevard, to Junction boulevard, to Fifty Seventh Avenue, to Ninety Ninth street, to Sixty Third road, to the intersection of Junction boulevard, Sixty Third road, Sixty Third drive and Queens boulevard, along Queens boulevard to Fifty First avenue, to Sixty Ninth street, to the intersection of Long Island expressway, Sixty Ninth street and Grand avenue, along Grand avenue, to Sixty Fourth street, to Fifty Ninth drive, to Sixtieth avenue, to Fresh Pond road, to Eliot avenue,

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to Metropolitan avenue, along Metropolitan avenue to the Queens-Kings county line, then northerly along said line to Newton creek, to East river, to East channel, to Hell Gate, to Riker's island channel, to East river and Flushing bay to the place of beginning. (434,770)

Tenth Congressional district. That part of the county of Queens described as follows: Beginning at a point where the Queens-Kings county line is intersected by Rockaway inlet, then easterly and northerly along said line to a point where said line is intersected by the waters of Jamaica bay and Grassy bay, then easterly through the waters of Jamaica bay, Grassy bay and Mott basin to the dividing line between the county of Queens and the county of Nassau, then easterly and southerly along said dividing line to the waters of the Atlantic ocean, then westerly through the waters of the Atlantic ocean and Rockaway inlet to the place of beginning; and That part of the county of Kings described as follows: Beginning at a point where the Queens-Kings county line meets the United States pierhead and bulkhead line, then westerly and southerly along such bulkhead line to the waters of Paerdegat basin, then through the waters of Paerdegat basin to a point where Seaview avenue extended meets the waters of Paerdegat basin, then along Seaview avenue extended and Seaview avenue to East Eightieth street, to Avenue "N", to East Eighty Fourth street, to Avenue "L", to East Eighty Third street, to Avenue "K", to East Eighty Sixth street, to Avenue "L", to Remsen avenue, to Avenue "K", to East Ninety First street, to Flatlands avenue, to East Ninety Third street, to Farragut road, to East Ninety Sixth street, to Foster avenue, to Rockaway parkway, to Ditmas avenue, to East Ninety Eighth street, to the intersection of East Ninety Eighth street and Hopkinson avenue, then along Hopkinson avenue to Hegeman avenue, to East Ninety



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Eighth street, to Rutland road, to East Ninety Sixth street, to East New York avenue, to the intersection of East New York avenue, Empire boulevard and Utica avenue, then along Utica avenue to Montgomery street, to Schenectady avenue, to the intersection of Schenectady avenue, Empire boulevard and Lefferts avenue, then along Lefferts avenue to Troy avenue, to Montgomery street, to Nostrand avenue, to Empire boulevard, to the intersection of Empire boulevard, Flatbush avenue and Ocean avenue, then along Ocean avenue to Church avenue, to East Twenty First street, to Albemarle road, to Flatbush avenue, to the intersection of Flatbush avenue, Avenue "D" and Ditmas avenue, then along Ditmas avenue to East Twenty Second street, to Foster avenue, to Ocean avenue, to Avenue "I", to East Twenty Third street, to Avenue "I", to East Twenty Seventh street, to Avenue "M", to Bedford avenue, to Avenue "P", to East Twenty Third street, to Quentin road, to Nostrand avenue, to the intersection of Nostrand avenue and Gerritsen avenue, then along Gerritsen avenue to Fillmore avenue, to Stuart street, to Avenue "U", to Gerritsen avenue, to Whitney avenue, to Burnett street, to Avenue "X", to Gerritsen avenue and Gerritsen avenue extended to the Queens-Kings county line, then easterly and northerly along such county line to the point of beginning.

(Queens Part 70,891; Kings 346-231—417,122)

Eleventh Congressional district. That part of the county of Kings described as follows: Beginning at a point where the Queens-Kings county line meets the United States pier-head and bulkhead line, then westerly and southerly along such bulkhead line to the waters of Paerdegat basin, then through the waters of Paerdegat basin to a point where Seaview avenue extended meets the waters of Paerdegat basin, then along Seaview avenue extended and Seaview avenue to East Eightieth street, to Avenue "N", to East

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Eighty Fourth street, to Avenue "L", to East Eighty Third street, to Avenue "K", to East Eighty Sixth street, to Avenue "L", to Bensen avenue, to Avenue "K", to East Ninety First street, to Flatlands avenue, to East Ninety Third street, to Farragut road, to East Ninety Sixth street, to Foster avenue, to Rockaway parkway, to Ditmas avenue, to East Ninety Eighth street, to the intersection of East Ninety Eighth street and Hopkinson avenue, then along Hopkinson avenue to Hegeman avenue, to East Ninety Eighth street, to Rutland road, to East Ninety Sixth street, to East New York avenue, to Ralph avenue, to Marion street, to Howard avenue, to Chauncey street, to Ralph avenue, to Macon street, to Howard avenue, to Broadway, to Grove street, to Bushwick avenue, to Linden street, to Evergreen avenue, to Menahan street, to Wilson avenue, to Linden street, to Knickerbocker avenue, to Palmetto street, to Irving avenue, to Bleecker street, to the Queens-Kings county line, then southerly easterly and southerly along said county line to the point of beginning. (417,090)

Twelfth Congressional district. That part of the county of Kings described as follows: Beginning at a point where Meeker avenue meets the Kings-Queens county line, then along Meeker avenue to Manhattan avenue, to Grand street, to Leonard street, to Meserole street, to Graham avenue, to Johnson avenue, to Manhattan avenue, to Boerum street, to Leonard street, to Broadway to the intersection of Broadway and Throop avenue, then along Throop avenue to Gerry street, to Harrison avenue, to Flushing avenue, to the intersection of Flushing avenue, Union avenue and Marcy avenue, then along Marcy avenue to Park avenue, to Spencer street, to Myrtle avenue, to Bedford avenue, to Monroe street, to Franklin avenue, to Putnam avenue to Classon avenue, to Lefferts place, to Franklin avenue to the intersection of Franklin avenue, Washington avenue

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and Empire boulevard, then along Empire boulevard to Nosstrand avenue, to Montgomery street, to Troy avenue, to Lefferts avenue, to the intersection of Lefferts avenue, Empire boulevard and Schenectady avenue, then along Schenectady avenue to Montgomery street, to Utica avenue, to the intersection of Utica avenue, Empire boulevard and East New York avenue; then along East New York avenue to Ralph avenue, to Marion street, to Howard avenue, to Chauncey street, to Ralph avenue, to Macon street, to Howard avenue, to Broadway, to Grove street, to Bushwick avenue to Linden street, to Evergreen avenue to Menahan street, to Wilson avenue, to Linden street, to Knickerbocker avenue, to Palmetto street, to Irving avenue, to Bleecker street, to the Queens-Kings county line, then northerly and westerly along such line to the point of beginning.

(417,298)

Thirteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where West Eighth street extended meets the waters of the Atlantic ocean, then West Eighth street extended and West Eighth street to Surf avenue, to West Fifth street, to Shore parkway, to Ocean parkway, to Avenue "X", to McDonald avenue, to Avenue "U", to West Ninth street, to Avenue "T", to West Twelfth street, to Avenue "S", to Stillwell avenue, to the intersection of Stillwell avenue, Quentin road, Seventy Eighth street and Twenty Third avenue, then along Twenty Third avenue to Seventy Ninth street, to Bay parkway, to Seventy Third street, to Twenty First avenue, to Seventy Second street, to Nineteenth avenue, to Sixty Eighth street, to Eighteenth avenue, to Sixty Fifth street, to Seventeenth avenue, to Sixty Fourth street, to Sixteenth avenue, to Dahill road, to Church avenue, to East Fifth street, to Beverly road, to Ocean parkway, to Church avenue, to Coney Island avenue, to Caton avenue,

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to Westminster road, to Church avenue, to East Eighteenth street, to Tennis court, to Ocean avenue, to Church avenue, to East Twenty First street, to Albemarle road, to Flatbush avenue, to the intersection of Flatbush avenue, Avenue "D", and Ditmas avenue, then along Ditmas avenue to East Twenty Second street, to Foster avenue, to Ocean avenue, to Avenue "I", to East Twenty Third street, to Avenue "L", to East Twenty Seventh street, to Avenue "M", to Bedford avenue, to Avenue "P", to East Twenty Third street, to Quentin road to Nostrand avenue, to the intersection of Nostrand avenue and Gerritsen avenue, then along Gerritsen avenue to Fillmore avenue, to Stuart street, to Avenue "U", to Gerritsen avenue, to Whitney avenue, to Burnett street, to Avenue "X", to Gerritsen avenue and Gerritsen avenue extended to the Queens-Kings County line and then westerly through the waters of Rockaway inlet and the Atlantic ocean to the point of beginning.

(417,040)

Fourteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where Meeker avenue meets the Kings-Queens county line, then along Meeker avenue to Manhattan avenue, to Grand street, to Leonard street, to Meserole street, to Graham avenue, to Johnson avenue, to Manhattan avenue, to Boerum street to Leonard street, to Broadway, to the intersection of Broadway and Throop avenue, then along Throop avenue to Gerry street, to Harrison avenue, to Flushing avenue, to the intersection of Flushing avenue, Union avenue and Marcy avenue, then along Marcy avenue to Park avenue, to Spencer street, to Myrtle avenue, to Bedford avenue, to Monroe street, to Franklin avenue, to Lexington avenue, to Classon avenue, to Greene avenue, to Carlton, avenue, to Fulton street, to Adelphi street, to Atlantic avenue to Flatbush avenue, to Sixth avenue, to Prospect place, to Fifth avenue, to St. Marks place, to Fourth avenue, to



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Union street, to Fifth avenue, to First street, to Sixth avenue, to Ninth street, to Fourth avenue, to Prospect avenue, to Fifth avenue, to Twenty Fourth street, to Fourth avenue, to Fifty First street, to Third avenue, to Fifty Sixth street, to Fourth avenue, to Sixtieth street, to Third avenue, to Eighty First street, to Ridge boulevard, to Eighty Third street, to Colonial road, to Seventy Eighth street, to Narrows avenue, to Seventy Seventh street and Seventy Seventh street extended to the waters of the Narrows, then through the waters of the Narrows, Upper bay, Buttermilk channel, and the East river to a point where said river meets the Kings-Queens county line, then easterly along said county line as it winds and turns to the point of beginning.

(417,080)

Fifteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where Third avenue extended intersects the waters of the Narrows, then along Third avenue extended and Third avenue to Ninety Fifth street to Fort Hamilton parkway, to Eighty Fourth street, to Seventh avenue, to Eighty Sixth street, to Twelfth avenue, to Eightieth street, to Thirteenth avenue, to Seventy Third street, to Fourteenth avenue, to Sixty Third street, to Sixteenth avenue, to Dahill road, to Church avenue, to East Fifth street, to Beverly road, to Ocean parkway, to Church avenue, to Coney Island avenue, to Caton avenue, to Westminster road, to Church avenue, to East Eighteenth street, to Tennis court, to Ocean avenue, to the intersection of Ocean avenue, Flatbush avenue and Empire boulevard, then along Empire boulevard to the intersection of Empire boulevard, Washington avenue and Franklin avenue, then along Franklin avenue to Lefferts place, to Classon avenue, to Putnam avenue, to Franklin avenue, to Lexington avenue, to Classon avenue, to Greene avenue, to Carlton avenue, to Fulton street, to Adelphi street, to Atlantic avenue, to Flatbush avenue, to

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Sixth avenue, to Prospect place, to Fifth avenue, to St. Marks place, to Fourth avenue, to Union street, to Fifth avenue, to First street, to Sixth avenue, to Ninth street, to Fourth avenue, to Prospect avenue, to Fifth avenue, to Twenty Fourth street, to Fourth avenue, to Fifty First street, to Third avenue, to Fifty Sixth street, to Fourth avenue, to Sixtieth street, to Third avenue, to Eighty First street, to Ridge boulevard, to Eighty Third street, to Colonial road, to Seventy eighth street, to Narrows avenue, to Seventy Seventh street and Seventy Seventh street extended to the waters of the Narrows, then southerly through said waters to the point of beginning. (417,093)

Sixteenth Congressional district. The county of Richmond; and That part of the county of Kings described as follows: Beginning at a point where Third avenue extended intersects the waters of the Narrows, then along Third Avenue extended and Third avenue to Ninety Fifth street, to Fort Hamilton parkway, to Eighty Fourth street, to Seventh avenue, to Eighty Sixth street, to Twelfth avenue, to Eightieth street, to Thirteenth avenue, to Seventy Third street, to Fourteenth avenue, to Sixty Third street, to Sixteenth avenue, to Sixty Fourth street, to Seventeenth avenue, to Sixty Fifth street, to Eighteenth avenue, to Sixty Eighth street, to Nineteenth avenue, to Seventy Second street, to Twenty First avenue, to Seventy Third street, to Bay Parkway, to Seventy Ninth street, to Twenty Third avenue, to the intersection of Twenty Third avenue, Seventy Eighth street, Quentin road and Stillwell avenue, then along Stillwell avenue to Avenue "S", to West Twelfth street, to Avenue "T", to West Ninth street, to Avenue "U", to McDonald avenue, to Avenue "X", to Ocean parkway, to Shore parkway to West Fifth street, to Surf avenue, to West Eighth street and West Eighth street extended into the waters of the Atlantic ocean, then westerly and northerly through the

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waters of the Atlantic ocean, Lower bay, Gravesend bay and the Narrows to the point of beginning.

(Richmond 221,991; Kings Part 195,487—417,478)

Seventeenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the East river and East Fourteenth street extended, then westerly along East Fourteenth street extended and East Fourteenth street to First avenue, to East Nineteenth street, to Third avenue, to the Bowery, to Great Jones street, to West Third street, to Avenue of the Americas, to West Fourth street, to Christopher street, to Bleecker street, to Abington square, to Eighth avenue to West Fourteenth street, to Seventh avenue, to West Thirty Fourth street, to Eighth Avenue, to West Fifty Fourth street, to Ninth avenue, to Columbus avenue, to West Seventy Third street, to Central Park West, to West One Hundred Tenth street, to Frawley Circle, to Fifth Avenue, to East Ninety Eighth street, to Madison Avenue, to East Ninety Seventh street, to Park avenue, to East Ninety Sixth street, to Lexington avenue, to East Ninety Fourth street, to Third avenue, to East Ninety Second street, to Second avenue, to East Ninety First street, to York avenue, and York avenue extended into the waters of the East river and southerly through said waters to the place of beginning, including Welfare island and Belmont island.

(390,742)

Eighteenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the Harlem river and Seventh avenue extended, then along Seventh avenue extended and Seventh avenue to West One Hundred Forty Fifth street, to Eighth avenue, to West One Hundred Forty Seventh street, to Bradhurst avenue, to West One Hundred Fiftieth street, then westerly along West One Hundred

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Fiftieth street extended and West One Hundred Fiftieth street through Colonial park, to St. Nicholas avenue to West One Hundred Forty Fifth street, to Amsterdam avenue, to Morningside drive, to Cathedral parkway, then along Cathedral parkway and West One Hundred Tenth street, to Frawley Circle, to Fifth avenue, to East Ninety eighth street, to Madison avenue, to East Ninety Seventh street, to Park avenue, to East Ninety Sixth street, to Lexington avenue, to East Ninety Fourth street, to Third avenue, to East Ninety Second street, to Second avenue, to East Ninety First street, to York avenue and York avenue extended into the waters of the East river and through said waters and those of the Harlem river to the place of beginning, including Randall's island and Ward's island.

(390,861)

Nineteenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the East river and East Fourteenth street extended, then westerly along East Fourteenth street extended and East Fourteenth street, to First avenue, to East Nineteenth street, to Third avenue, to the Bowery, to Great Jones street, to West Third street, to Avenue of the Americas, to West Fourth street, to Christopher street, to Bleecker street, to Abington square, to Eighth avenue, to West Fourteenth street, to Seventh avenue, to West Thirty Fourth street, to Eighth avenue, to West Fifty Fourth street, to Ninth avenue, to Columbus avenue, to West Seventy Third street, to Central Park West, to West Eighty First street, to Columbus avenue, to West Seventy Eighth street, to Broadway, to West Seventy Seventh street, to Amsterdam avenue, to West Seventy Fifth street, to West End avenue, to West Seventy Fourth street, then along West Seventy Fourth street and West Seventy Fourth street extended into the waters of the Hudson river and through said waters and that of the Upper



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Bay and the East river to the place of beginning including Governor's island, Liberty island, Ellis island. (390,023)

Twentieth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the Hudson river and West Seventy Fourth street extended, then along West Seventy Fourth street extended and West Seventy Fourth street, to West End avenue, to West Seventy Fifth street, to Amsterdam avenue, to West Seventy Seventh street, to Broadway, to West Seventy Eighth street, to Columbus avenue, to West Eighty First street, to Central Park West, to Cathedral parkway, to Morningside drive, to Amsterdam avenue, to West One Hundred Forty Fifth street, to St. Nicholas avenue, to West One Hundred Fiftieth street and West One Hundred Fiftieth street extended through Colonial park to the intersection of West One Hundred Fiftieth street and Bradhurst avenue, then along Bradhurst avenue, to West One Hundred Forty Seventh street, to Eighth avenue, to West One Hundred Forty Fifth street, to Seventh avenue, then along Seventh avenue and Seventh avenue extended to the waters of the Harlem river, then northerly through said waters to the intersection with the Alexander Hamilton bridge, then westerly along the Alexander Hamilton bridge and its approaches, to Amsterdam avenue, to West One Hundred Seventy Fifth street, to Audubon avenue, to West One Hundred Seventy Fourth street, to St. Nicholas avenue, to West One Hundred Seventy Fifth street, to Wadsworth avenue, to West One Hundred Seventy Fourth street, to Fort Washington avenue, to West One Hundred Seventy Sixth street, to Pinehurst avenue, to West One Hundred Seventy Seventh street, to Haven avenue, then northerly along Haven avenue, to the approach to the George Washington bridge, to the George Washington bridge, to the waters of the Hudson river and through said waters to the place of beginning. (390,363)

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Twenty First Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the waters of the Harlem river and St. Ann's avenue extended, then along St. Ann's avenue extended to St. Ann's avenue, to Major Deegan expressway, to Bruckner expressway, to Longwood avenue, to Hewitt place, to Westchester avenue, to East One Hundred Sixtieth street, to Union avenue, to East One Hundred Sixty First street, to Eagle avenue, to East One Hundred Sixty Third street, to Washington avenue, to East One Hundred Sixty Fifth street, to Park avenue, to East One Hundred Sixty Seventh street, to Webster avenue, to Claremont parkway, to Bathgate avenue, to East One Hundred Seventy Second street, to Park avenue, to East One Hundred Seventy Third street, to Webster avenue, to Cross Bronx expressway, to Park avenue, to East Tremont avenue, to Bathgate avenue, to East One Hundred Seventy Eighth street, to Washington avenue, to East One Hundred Eightieth street, to Third avenue, to Quarry road, to Arthur avenue, to the intersection of Crescent avenue, Arthur avenue and East One Hundred Eighty Fourth street, then along East One Hundred Eighty Fourth street, to Third avenue, to East One Hundred Eighty Eighth street, to Park avenue, to East One Hundred Eighty Third street, to Webster avenue, to Ford street, to Tiebont avenue, to East One Hundred Eighty Third street, to Grand avenue, to West One Hundred Eighty Second street, to Jerome avenue, to West One Hundred Eighty First street, to University avenue, to Macombs road, to Nelson avenue, to Brandt place, to University avenue, to Tenney place, to Andrews avenue, to West One Hundred Seventy Fifth street, to University avenue, to Edward L. Grant highway, to West One Hundred Sixty Eighth street, to Shakespeare avenue, to Anderson avenue, to West One Hundred Sixty Sixth street, to Woodycrest avenue, to West One Hundred Sixty Fourth street, to Anderson avenue, to Jerome avenue, to Macombs bridge approach to Macombs

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bridge, to the waters of the Harlem river, then southerly through said waters to the place of beginning. (390,552)

Twenty Second Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the waters of the Harlem river and St. Ann's avenue extended, then along St. Ann's avenue extended and St. Ann's avenue, to Major Deegan expressway to Bruckner expressway, to Longwood avenue, to Hewitt place, to Westchester avenue, to East One Hundred Sixtieth street, to Union avenue, to East One Hundred Sixty First street, to Eagle avenue, to East One Hundred Sixty Third street, to Washington avenue, to East One Hundred Sixty Fifth street, to Park avenue, to East One Hundred Sixty Seventh street, to Webster avenue, to Claremont parkway, to Bathgate avenue, to East One Hundred Seventy Second street, to Park avenue, to East One Hundred Seventy Third street, to Webster avenue, to Cross Bronx expressway, to Park avenue, to East Tremont avenue, to Bathgate avenue, to East One Hundred Seventy Eighth street, to Washington avenue, to East One Hundred Eightieth street, to Third avenue, to Quarry road, to Arthur avenue, to the intersection of East One Hundred Eighty Fourth street, Arthur avenue, and Crescent avenue, then along Crescent avenue, to East One Hundred Eighty Seventh street, to Southern boulevard, to East Fordham road, to Boston road, to Pelham parkway north, to Bronx park east, to Allerton avenue, to White Plains road, to Waring avenue, to Bronxwood avenue and Muliner avenue, to Lydig avenue, to Bogart avenue, to Brady avenue, to Muliner avenue, to Neill avenue, to Bronxdale avenue, to Bronx park east, to Unionport road, along Unionport road and Unionport road extended to the intersection of Unionport road and Rhinelander avenue then easterly along Rhinelander avenue and Rhinelander avenue extended to Bronx River parkway, to Morris Park avenue, to East Tremont avenue, to Bronx

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Park avenue, to East One Hundred Seventy-Seventh street, to the Cross Bronx expressway, to Westchester avenue, to Leland avenue, to Bruckner expressway, to Olmstead avenue, to Lafayette avenue, to Castle Hill avenue, to Lacombe avenue, to Bronx River avenue, to Randall avenue and Randall avenue extended to the waters of the Bronx river, then southerly and westerly through said waters, East river and Harlem river to the place of beginning, also including North Brother island, South Brother island, and Rikers island. (390,492)

Twenty Third Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the Bronx-Westchester county line with the Major Deegan expressway, then southerly along the Major Deegan expressway, to Jerome avenue, to Bainbridge avenue, to East Two Hundred Tenth street, to Steuben avenue, to East Mosholu parkway north, to Webster avenue, to Mosholu parkway, to the railroad tracks of the New York Central railroad to Bedford Park boulevard, to Webster avenue to East Fordham road, to Park avenue, to Third avenue, to East One Hundred Eighty Eighth street, to Park avenue, to East One Hundred Eighty Third street, to Webster avenue, to Ford street, to Tiebout avenue, to East One Hundred Eighty Third street, to Grand Concourse, to East One Hundred Eighty Second street, to Jerome avenue, to West One Hundred Eighty First street, to University avenue, to Macombe road, to Nelson avenue, to Brandt place, to University avenue, to Tenney place, to Andrews avenue, to West One Hundred Seventy Fifth street, to University avenue, to Edward L. Grant highway, to West One Hundred Sixty Eighth street, to Shakespeare avenue, to Anderson avenue, to West One Hundred Sixty Sixth street, to Woodycrest avenue, to West One Hundred Sixty Fourth street, to Anderson avenue, to Jerome avenue, to Macombs bridge



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approach, to Macombs bridge, to the waters of the Harlem river, then northerly through said waters to the Bronx-New York county line, then northerly, westerly, and southerly along said line to the waters of the Harlem river, then through said waters and the Hudson river to the Bronx-Westchester county line, then easterly along said line to the place of beginning; and

That part of the county of New York beginning at the intersection of the waters of the Harlem river and the Alexander Hamilton bridge, then westerly along the Alexander Hamilton bridge and its approaches, to Amsterdam avenue, to West One Hundred Seventy Fifth street, to Audubon avenue, to West One Hundred Seventy Fourth street, to St. Nicholas avenue, to West One Hundred Seventy Fifth street, to Wadsworth avenue, to West One Hundred Seventy Fourth street, to Fort Washington avenue, to West One Hundred Seventy Sixth street, to Pinehurst avenue to West One Hundred Seventy Seventh street, to Haven avenue, then northerly along Haven avenue, to the approach to the George Washington bridge, to the George Washington bridge to the waters of the Hudson river, then northerly through the waters of the Hudson river and the Harlem river to the Bronx-New York county line then northerly, easterly, to southerly, along said county line to the waters of the Harlem river, then southerly through said waters to the place of beginning.

(Bronx Part 253,936; Manhattan Part 136,292—390,228)

Twenty Fourth Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the Bronx-Westchester county line with the Major Deegan expressway, then southerly along the Major Deegan expressway to Jerome avenue, to Bainbridge avenue, to East Two Hundred Tenth street, to Steuben avenue, to East Mosholu parkway north, to Web-

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ster avenue, to Moshulu parkway, to the railroad tracks of the New York Central railroad, to Bedford Park boulevard, to Webster avenue, to East Fordham road, to Park avenue, to Third avenue, to East One Hundred Eighty Fourth street, to Crescent avenue, to East One Hundred Eighty Seventh street, to Southern boulevard; to East Fordham road, to Boston road, to Pelham parkway north, to Bronx Park east, to Allerton avenue, to White Plains road, to Waring avenue; to Bronxwood avenue and Muliner avenue, to Lydig avenue, to Bogart avenue, to Brady avenue, to Muliner avenue, to Neill avenue, to Bronxdale avenue, to Bronx Park east, to Unionport road, along Unionport road and Unionport road extended, to the intersection of Unionport road and Rhinelander avenue then easterly along Rhinelander avenue and Rhinelander avenue extended to Bronx River parkway, to Morris Park avenue, to East Tremont avenue, to Bronx Park avenue, to East One Hundred Seventy Seventh street, to the Cross Bronx expressway, to Westchester avenue, to Leland avenue, to Bruckner expressway, to Olmstead avenue, to Lafayette avenue, to Castle Hill avenue, to Lacombe avenue, to Bronx River avenue, to Randall avenue and Randall avenue extended to the waters of the Bronx river, then southerly and northerly through the waters of the Bronx river, East river, Long Island sound, to the Bronx-Westchester county line extended, thus westerly along said county line to the place of beginning, also including Hunters island, Middle Reef island, East Nonations island, South Nonations island, Machaux island, the Blauzes, Hart island, High island, Chimney Sweeps, Twin island, Rat island, Greenflats island, Big Tom island, Cuban Ledge island, City island and any other island not aforementioned.

(390,057)

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Twenty-Fifth Congressional district. The county of Putnam; and in the county of Westchester the towns of Cortlandt, Ossining, Mount Pleasant, Greenburgh and Eastchester; and the cities of Peekskill and Yonkers, except that portion of the city of Yonkers beginning at a point where Yonkers-New York city line meets Old Jerome avenue, then along Old Jerome avenue to McLean avenue, to the New York State thruway, to McMahon avenue, to Browning avenue, to Mildred street, in Vandenburg avenue, to Kimball avenue, to Mile Square road, to Bronx River road, to Edgewood avenue, then along Edgewood avenue to the Mt. Vernon-Yonkers city line, then southerly and westerly along the Mt. Vernon-Yonkers city line and the Yonkers-New York city line to the point of beginning.

(Putnam 31,722; Westchester, Part 388,424—420,146)

Twenty Sixth Congressional district. That part of the county of Westchester described as follows: The towns of Yorktown, Somers, North Salem, Mamaroneck, Scarsdale, Lewisboro, Bedford, Pound Ridge, Pelham, New Castle, North Castle, Rye and Harrison; and the cities of White Plains, Mount Vernon, New Rochelle and Rye, and that portion of the city of Yonkers beginning at a point where Yonkers-New York City line meets Old Jerome avenue, then along Old Jerome avenue to McLean avenue, to the New York State thruway, to McMahon avenue, to Browning avenue, to Mildred street, to Vandenburg avenue, to Kimball avenue, to Mile Square road, to Bronx River road, to Edgewood avenue, then along Edgewood avenue to the Mt. Vernon-Yonkers city line, then southerly and westerly along the Mt. Vernon-Yonkers city line and the Yonkers-New York city line to the point of beginning.

(420,467)

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Twenty-Seventh Congressional district. The counties of Rockland, Orange, Sullivan and Delaware. (Rockland 136,803; Orange 183,734; Sullivan 45,272; Delaware 43,540—409,349).

Twenty-Eighth Congressional district. The counties of Dutchess, Ulster, Columbia, Greene and Schoharie. (Dutchess 176,008; Ulster 118,804; Columbia 47,322; Greene 31,372; Schoharie 22,616—396,122).

Twenty-Ninth Congressional district. The counties of Albany and Schenectady. (Albany 272,926; Schenectady 152,896—425,822).

Thirtieth Congressional district. The counties of Rensselaer, Saratoga, Washington, Warren, Fulton, Hamilton and Essex. (Rensselaer 142,585; Saratoga, 89,096; Washington 48,476; Warren 44,002; Fulton 51,304; Hamilton 4,267; Essex 35,300—415,030).

Thirty-First Congressional district. The counties of Clinton, St. Lawrence, Jefferson, Lewis, Franklin and Oswego. (Clinton 72,722; St. Lawrence 111,239; Jefferson 87,835; Lewis 23,249; Franklin 44,742; Oswego 86,118—425,905).

Thirty-Second Congressional district. The counties of Oneida, Madison and Herkimer. (Oneida 264,401; Herkimer 66,370; Madison 54,635—385,406).

Thirty-Third Congressional district. The counties of Chemung, Broome, Tioga and Tompkins. (Chemung 98,706; Broome 212,661; Tioga 37,802; Tompkins 66,164—415,333).

Thirty-Fourth Congressional district. The county of Onondaga.

Thirty-Fifth Congressional district. The counties of Ontario, Yates, Seneca, Cayuga, Cortland, Chenango, Otsego



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and Montgomery. (Ontario 68,070; Yates 18,614; Seneca 31,984; Cayuga 73,942; Cortland 41,113; Chenango 43,243; Otsego 51,942; Montgomery 57,240—386,148).

**Thirty-Sixth Congressional district.** That part of the county of Monroe described as follows: Beginning at a point where the waters of the Genesee river and Charlotte harbor intersect the waters of Lake Ontario, then in a southerly direction through the waters of Charlotte harbor and the Genesee river to a point where the Genesee river intersects the city line, then along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, and then through the waters of Lake Ontario to the place of beginning; and the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford and Webster; and the county of Wayne. (Monroe, part 342,954; Wayne 67,989—410,943).

**Thirty-Seventh Congressional district.** That part of the county of Monroe described as follows: Beginning at a point where the waters of the Genesee river and Charlotte harbor intersect the waters of Lake Ontario, then in a southerly direction through the waters of Charlotte harbor and the Genesee river to a point where the Genesee river intersects the city line, then along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, then through the waters of Lake Ontario to the place of beginning; and the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Rush, Sweden and Wheatland; and the counties of Orleans, Genesee, Wyoming and Livingston. (Monroe, part 243,433; Orleans 34,159; Genesee 53,994; Wyoming 34,793; Livingston 44,053—410,432).

**Thirty-Eighth Congressional district.** The counties of Chautauqua, Cattaraugus, Allegany, Steuben and Schuyler, (Chautauqua 145,377; Cattaraugus 80,187; Allegany 43,978; Steuben 97,691; Schuyler 15,044—382,277).

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**Thirty-Ninth Congressional district.** That part of the county of Erie described as follows: Beginning at a point where Starin avenue intersects the dividing line between the city of Buffalo and the town of Tonawanda, then along Starin avenue to Taunton place, to Standish road, to Parkside avenue to North drive, to Sterling avenue, to Taunton place to Norwalk avenue, to Linden avenue, to Parkside avenue, to Amherst street, to Nottingham terrace, to Elmwood avenue, to Lafayette avenue, to Main street to LeRoy avenue, to Kensington avenue, to the east city line, then along said city line to the place of beginning; and that part of the city of Lackawanna described as follows: Beginning at a point where South Park avenue intersects the city lines of the city of Buffalo and the city of Lackawanna, then along South Park avenue, to Nason parkway, to Electric avenue, to Ridge road, to Franklin street to Prospect place, to Center street, to Kirby avenue, to Electric avenue, to the intersection of Electric avenue, the south city line of the city of Lackawanna and the town line of Hamburg, then along said Lackawanna city line to the place of beginning; and the towns of Amherst, Clarence, Newstead, Cheektowaga, Lancaster, Alden, Marilla, Elma, West Seneca, Hamburg, Orchard Park, Aurora, Wales, Holland, Colden, Boston, Eden, Evans, Brant, North Collins, Collins, Concord, Sardinia and that part of the Cattaraugus Indian reservation within the county of Erie. (435,393).

**Fortieth Congressional district.** That part of the county of Erie described as follows: Beginning at a point where Starin avenue intersects the dividing line between the city of Buffalo and the town of Tonawanda, then along Starin avenue to Taunton place, to Standish road, to Parkside avenue, to North drive, to Sterling avenue, to Taunton place to Norwalk avenue, to Linden avenue, to Parkside avenue, to Amherst street, to Nottingham terrace, to Elm-

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wood avenue, to Amherst street, to Reservation street, to Grote street, to Howell street, to Amherst street, to Thompson street, to Hamilton street, then along Hamilton street and Hamilton street extended to the waters of the Niagara river, then northerly through the waters of the Niagara river to a point where Vulcan street extended intersects the waters of the Niagara river, then along Vulcan street and Vulcan street extended and the dividing line between the city of Buffalo and the town of Tonawanda to the place of beginning; and the towns of Tonawanda, Grand Island, city of Tonawanda and the Tonawanda Indian reservation; and the county of Niagara.

(Erie, part 193,415; Niagara 242,269—435,684)

Forty-First Congressional district. That part of the county of Erie described as follows: Beginning at a point within the city of Buffalo where Hamilton street extended intersects the waters of the Niagara river, then along Hamilton street extended and Hamilton street to Thompson street, to Amherst street, to Howell street, to Grote street, to Reservation street to Amherst street, to Elmwood avenue, to Lafayette avenue, to Main street, to LeRoy avenue, to Kensington avenue, to the east city line of the city of Buffalo, along said city line and city line extended to the waters of Lake Erie, then northerly through the waters of Buffalo harbor, Lake Erie and Niagara river to the place of beginning including Squaw island; and that part of the city of Lackawanna described as follows: Beginning at a point where South Park avenue intersects the city lines of the city of Buffalo and the city of Lackawanna, then along South Park avenue to Nason parkway, to Electric avenue, to Ridge road, to Franklin street, to Prospect place, to Center street, to Kirby avenue, to Electric avenue, to the intersection of Electric avenue, the south city line of the city of Lackawanna and the town

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line of Hamburg, then along the city line of the city of Lackawanna to the place of beginning. (435,880).

**§ 112. Definitions.**

The words "county", "city", "town", "village", as used in this article referred to counties, cities, towns and villages as constituted on November first, nineteen hundred sixty-seven.

§ 2. The congressional districts of this state, as existing immediately prior to the effective date of this act, shall continue to be the congressional districts of the state for the purpose of filling vacancies in the office of representative in congress at any special election held prior to the general election of the year nineteen hundred sixty-eight.

§ 3. The congressional districts of this state, from and after the effective date of this act, shall be the congressional districts of the state for the purpose of designating and nominating candidates for representatives in congress, and for electing district delegates and alternate district delegates to national party conventions.

§ 4. This act shall take effect immediately.



**Stenographic Minutes of Hearing Before Three Judge Court,  
March 12, 1968**

(R. 638-712)

**STATUTORY COURT**

**Before:**

**HON. LEONARD P. MOORE,**  
**Circuit Judge.**

**HON. LLOYD F. MACMAHON,**  
**HON. JOHN M. CANNELLA,**  
**District Judges.**

**66 Civil 1976**

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**DAVID<sup>o</sup> I. WELLS, et al.,**

*Plaintiffs,*

**vs.**

**NELSON A. ROCKEFELLER, et al.,**

*Defendants.*

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**New York, March 12, 1968**

**(2)**

**APPEARANCES:**

*Plaintiff—*

**ISADORE LEVINE, ESQ.,**

*Defendant—*

**LOUIS J. LEFKOWITZ,**  
**Attorney General of the State of New York**  
**by—GEORGE D. ZUCKERMAN,**  
**Assistant Attorney General,**

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DONALD ZIMMERMAN,  
Legal Consultant to Temporary President New  
York State Senate.

ROBERT B. BRADY,  
Counsel to Joint Legislative Commission on Re-  
apportionment.

*For Proposed Intervenors—*

F. W. Richmond

E. Victor

A. J. Starace

ROSENMAN, COLIN, KAYE, PITCHER, FREUND &  
EMIL, ESQS.,

by—AMBROSE DOSKOW, ESQ.

Mary Leff

Kathryn Goldman

EDWARD J. ENNIS, ESQ.

Andrew Cooper

Paul S. Kerrigan

Joan C. Bacchus

FRIEDMAN & PERLIN, ESQS.,

by MILTON H. FRIEDMAN, ESQ.

John R. Pillion

JOHN R. PILLION, ESQ., and ROBERT H. CARBY, ESQ.

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(3)

Judge Moore: We have called this court into session for the purpose of giving an opportunity to the various parties and the intervenors and would-be intervenors to state their positions with respect to the action taken by the Legislature recently in reapportioning the Congressional Districts of the state.

As you know, pursuant to decision of this court the Legislature has acted within the time limits specified in the court's order, and certain objections have been filed. It would serve no purpose to try to lead this court street by street through the various districts of the boroughs of this city or the counties beyond this city upstate. However, it would help the court if the parties who desire to be heard would briefly state on the record their positions.

We can't be expected to carry, as I say, these district lines with us, but if you do state with clarity your position on the record we will have that transcript to guide us in decision.

The other point I wish you all would state, or at least somebody who knows the facts would state, namely, the timetable, because under the law certain dates are important, certain dates have to be met. (4) There is a Primary date in June. There are dates by which petitions must be circulated. Since time is of the essence here if we are to have an election in 1968 based upon the present act we must render our decision very shortly, which we are determined to do.

Therefore, in whatever order you wish to speak, you proceed. As I say, just state the fundamentals of your positions because the rest we will have to take under advisement after the hearing.

Mr. Levine: Your Honor, I assume that since I represent the plaintiffs I might be the first speaker.

I shall of course guide myself in accordance with the suggestion made by your Honor.

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In answer to your question with respect to the timetable, I do happen to know that April 2nd is the first day for the securing of petitions. As a consequence, that would be absolutely the last day for this court, and the Supreme Court, if necessary, to reach its decision. June 18th is Primary Day.

With respect to the plaintiffs, I don't want to belabor this court with a repetition of my brief which has been in your honors' possession for (5) about a week, and I shall merely state the four principles of law which enunciated, and which in my opinion indicate, the present plan is not in accordance with the dictates and decisions of the United States Supreme Court.

Number 1: it does not achieve equality as nearly as practicable in accordance with the decision in the Wesberry case.

Number 2: it establishes differences between populations of adjacent districts which are easily avoidable. We have gone into detail in the brief—and I will not repeat it here—to show with the mere switching of one county to another you have greater equality of numbers.

Number 3: it includes districts which are so lacking in any semblance of compactness as to merit the term bizarre, which was used by this particular court. Many of the districts this court castigated and referred to as being bizarre originally still exist in the new statute which is passed.

Number 4: three of the states political subdivisions, two cities and one town, are needlessly divided between two Congressional Districts in an arbitrary manner.

(6)

We have shown in our brief—and I will not repeat, it here now—that it wasn't necessary to cut up one town into two, or one city into two Congressional Districts.



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Under the cases, any change, no matter how slight, as your Honors know, must be justified rationally. There must be some reasonable explanation for it.

In the briefs of the state no justification has been shown for the changes which were in fact made and which were in fact not made by the State Legislature.

Again, rather than repeat all of these things I have a 15-page brief or so, each particular change suggested is there. I again urge it upon your Honors.

Finally, if your Honors do not wish to adopt the entire Wells plan, as I refer to it, we have a suggestion that certain basic critical areas be changed, such as in the 6th and the 8th Congressional District in Queens which has practically the same bizarre shape which it had before, such as in the 35th District upstate which runs 200 miles across the state and across many county lines, and (7) we urge your Honors to consider that.

Finally, I wish to state that the 12th Congressional District in Kings County represents a district which the state did in fact come upon as representing a compact, contiguous district in accordance with the dictates of the United States Supreme Court, and we urge whatever districts the court does finally come upon that it represent such a contiguity as shown in that particular district.

Thank you very much.

Judge Moore: Thank you.

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(22) \* \* \*

Judge Moore: Thank you.

Is there anyone else to speak against the act?

Mr. Pillion: If the Court please, my name is John R. Pillion. I am an applicant intervening, and I would merely like to note my appearance and to rest my case on the papers I submitted.

Judge Moore: Very well.

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Mr. Zuckerman, I guess your opponents have spoken. We will give you a chance.

Mr. Zuckerman: If the Court please, your Honors, first I would like to call in defense of the statute that was passed by the Legislature and signed into law as Chapter 8 of the Laws of 1968 the special counsel to the Joint Legislative Committee on Reapportionment, Robert Brady, to make a statement to the Court.

Judge Moore: Very well.  
(23)

Mr. Brady: If your Honors please, it is an unusual honor to be mentioned by name as an expert, number 1, and to be assigned certain—I think the word was invidious motives for the drawing of certain districts.

Judge Moore: Don't give it too much significance, however, because as my colleagues on either side of me know that in every case where an expert is called to say one thing the other side calls an expert who says exactly the opposite.

Mr. Brady: I am a bit bemused, however, with the statement in the papers of Mr. Doskow and specifically in the affidavit of Mr. Victor in that if we were to believe everything that we read in the newspapers the drawing of lines in Kings County would have the effect of possibly making it difficult for Mrs. Kelly to run for Congress. As I say, if we were to believe that.

I represented in the case that Mr. Victor is talking about Mrs. Kelly, and so now I am presumably on both sides of the same case. I don't know exactly where I stand on that.

Judge MacMahon: It is hard to lose.

Mr. Brady: Or to win.

(24)

Judge MacMahon: Or to win.

Mr. Brady; With respect to Kings County, this court,

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I would expect, understood that if we were to remove from the center of Brooklyn the so-called 16th, the piece of the 16th, Congressional District that it basically required a change of the whole of Kings County, since a vacuum was created, and as soon as the vacuum was created it must necessarily have been filled.

This court, although it was—I withdraw that.

In any event, some mention was made of the 16th in that to travel from Staten Island to the other portion of that district that it was necessary to traverse several other districts. The Legislature took that admonition to heart, and it is not now necessary to traverse any other districts other than the one which comes right straight from the Verrazano Bridge.

As soon as that became necessary, the mere shifting, for example, of a line with the 12th and the 15th, which was in itself a vast disparity of population would not have sufficed. The fact is that the 16th itself acted as a gore throughout the (25) County of Kings and actually split the old 12th District into a big U shape, and the result is that as soon as that is removed the districts then became more easily joined.

I think one point does require some comment. The State of New York is a historically regional state. It has developed, as the Court is well aware, along the waterways. The waterways were followed by railroads which again developed along the waterways as being the easiest way to go. The canal in the early 1800s was a vast improvement. It made development of New York State important, and it followed a specific line throughout the state. The Thruway follows the canal. The development of the populations follow the waterways and the railroads and the roads.

More recently the highways that traverse Long Island have developed Long Island, in a 20th century develop-

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ment of population pretty much the same as it occurred in the 17th and 18th and 19th centuries.

New York City is today, as it was then, probably the most single important region that we have. Since the end of the 19th century (26) it's been one city composed of five counties and five boroughs. It's been for many reasons an area which for lack of any other way of describing it becomes the city versus upstate, and yet a present discussion must necessarily understand that now even as the Legislature recognizes we recognize that the region around New York City is fast becoming a single region. The Transit Authority involving the trains and the Long Island Railroad, the subways, and possibly at some other time the New Haven and New Hartford, and certainly the Central Railroad, all of those things indicate that we are developing a larger area than New York City.

However, to the present date, at any rate, the court in its opinion recognized that the city has some basic integrity. The Legislature recognized that it should remain remain pretty much separate. Separate at least to the extent that any Congressional Districts it contained should remain within the city.

Of course, there then comes the next problem of the fact that Long Island itself, if the city remains as an entity, Long Island itself then becomes a separate piece, and Suffolk and Nassau in the presence in Chapter 8 were treated as one piece, (27) were so divided as to make the various districts within two or three hundred of each other.

They all are under the so-called state mean. They all, because of the way the 1961 statute drew the lines, the Legislature had to give population to the 2nd Congressional District. The attempt was made—and not too successfully—to stick to Election Districts. I think the interim report mentions that. It is somewhat more difficult to stick to Election Districts in the County of Nassau because of the



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type of development, real estate development, that is done there.

The Board of Elections finds no difficulty, for example, in drawing a line behind houses, but it is rather difficult for the Legislature so to do. And so in some four instances in Nassau County it was necessary somewhat to break Election Districts.

The purpose for maintaining Election District integrity was to allow as smooth a transference from the 1961 statute to the 1968 statute as possible. The present system of elections in the State of New York, and of registration in the State of New York, required permanent personal registration, and permanent personal registration requires that the Board of Elections (28) notify those people whose Election Districts have been changed.

The Board of Elections has the right to change any Election District at any time. But because of the mechanical difficulties in so doing, since people do not then thereafter come in to register in the new district, the mechanical difficulties generally require that they leave those districts which are set within the satisfactory statutory limits alone.

But if a district line runs through a present Election District line—the district being an Election, Assembly, or in this case a Congressional District—where two different candidates would be voted for on either side of that line, those people who live on both sides of the line must of necessity be divided since they couldn't vote for two different candidates for the same office on the same election voting machine.

The desire of the Legislature was to enable this court and the Boards of Election to make as easy a transfer from one type of statute, notably that of 1961, to the one that we presently have.

The result is that in Kings County there are (29) no split Election Districts. In Nassau County there are, I

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believe, four. In New York County, because of population changes, those population changes having taken place since 1960, the Boards of Elections have been forced to draw some of their Election Districts in such a manner as to make it impossible to use the areas involved in the same manner as they might have been had they been populated at that particular time. They had taken down the Polo Grounds, and a few other places, in an area that wasn't disputed, and because of that after having built the houses they put in many, many more Election Districts than what might be considered by some of the attorneys for the intervenors in a bizarre way.

In any event, there were districts split there, and one I think is noted in the report as being a cosmetic breaking of a district, the 9th Congressional District. Although it was possible to keep the Election Districts intact it would have required going around a cemetery in a manner that would have obviated possibly one day's work on the part of the Board of Elections but would have been—well, at least not as neat and as clean as the present (30) line.

In Westchester County, in the area that has been joined to the 26th Congressional District, and taken from the 25th, the requirements there of not splitting an Election District—a requirement self-employed, by the way, of not splitting Election Districts—were fulfilled. One whole ward was taken out, and there are three Election Districts of the 12th Ward, plus one piece, in order to achieve contiguity:

So that the 3rd Election District of the 12th Ward in the City of Yonkers was split, but that is the only one required, and, parenthetically, so far as I can ascertain, the Election District itself remains with, I think, only five or six voters who have to be notified. There is a shopping district in the area that was split apart.

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Now, with respect to New York City in general, if the decision made, which is to maintain it as an entity—if that decision was valid, and I see no reason why it shouldn't be valid, then the city itself breaks down into almost regions. The suggested plan of the plaintiffs in essence joins three counties—Richmond, Queens and Kings—(31) as one region, and New York and the Bronx as another region.

With respect to that we were faced with a decision. We joined New York and the Bronx together. The least populous Congressional District, the 24th, was in the Bronx. All of the Bronx had four Congressmen. They were pretty much under in population. By joining them with New York we were able to raise the population and equalize them. We were able to raise the population to about 390,000 and a bit more.

We maintained those averages throughout the whole of the Manhattan-Bronx complex.

However, with respect to the Queens-Richmond-Kings complex, some 112,000 people were required to remove a piece from Queens into Kings and to join Richmond to it. That would have required some 71,000 in the Rockaways, according to the 1960 figure, and some 40,000 on the mainland of Queens County.

The decision was made to separate only the Rockaways, since it was an island, since it was, in effect, joined to Kings County by bridges, and to make the 10th Congressional District, which is in (32) its essence about the same as it was before, with the additional area which was before that attributed to the 16th. It required a shrinkage, of course, of some of the lines of the 10th, and the populations, as the Court knows from the report which has been just submitted to you, has been equalized along those lines.

Correspondingly, the populations of the four districts in Queens were equalized in order to allow the board, plus

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the people, the least amount of confusion in a turnover election which might in its very nature be somewhat hurried since the Act was only passed on February 26th. I must say this parenthetically: that the timetable is April 2nd for the circulation of petitions. No Court could be without some knowledge, perhaps vast knowledge, of the amount of work which goes into a congressional campaign, and no Court could be unaware of the fact that the April 2nd date is only a date which commences the formal part of the petition process. The work that is done by those who wish to seek nomination in a Primary begins far before that. A mass changing of lines would vitiate to a great extent (33) the effectiveness of any Primary unless it is absolutely necessary; and it was to a great extent necessary in Kings. Not in Queens. The decision to keep just the island rather than the island and a piece of the mainland was adhered to.

In New York County the problem was somewhat different. New York County is an island with one piece on the mainland. Manhattan Island is joined to Marble Hill on the Bronx mainland, the mainland in New York State. It had too many under the 1961 statute and, as we say, was to be joined in a region in the Bronx which had too few. The Bronx therefore ended up with three and I would say about two-thirds Congressmen, if there is such a thing as a two-thirds Congressman—in area at any rate. And in New York County four and about a third.

The problem of joining that piece of the island to Bronx County was gone into quite thoroughly. Test attempts to utilize various suggestions made by members of the Legislature and others to join a piece of Manhattan to Bronx County were entered into.

The results were different, without being effective. There did not seem to be too much reason (34) to change the 15th Congressional District, which is currently not repre-



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sented, but which is a compact area which was represented for many years by a well known resident of that particular community. It would have required changing areas quite substantially.

So after examining the various premises which were made as to how Manhattan Island should be joined to the Bronx, the judgment of the committee and of the Legislature was that the top end of Manhattan Island would be joined to the piece of New York County which is on the Bronx mainland, that that amount of Manhattan Island would be kept intact, the so-called fallout would be kept in one piece. That required that the one area of the Bronx which was to be the two thirds, I guess you would call it, in population area would be joined as one part, and was the area which is presently encompassed by the 23rd.

Needless to say, you could draw the lines almost any way so long as you count, and as the Court has indicated the count is based upon the 1960 census, and the 1960 census is based upon people who live and where they live.

(35)

Again going back to my opening statement, the geography of Bronx, Queens, like some of the upstate counties, are populated by parks and by cemeteries. The Bronx was not a very well populated area at one time, nor was Queens until quite recently. It was far enough away for those who lived in the great metropolis of New York, in the County of Brooklyn in the early 19th century, to develop a lot of cemetery area, and park area, in those communities.

You find yourself faced in all of these problems with vast areas that are unused land which have no population at all, and, therefore, create what would seem to be contour difficulties in the shapes of districts in order to get groupings of population. But you can go any way you want. The Legislature felt that it had done it as best that it could.

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The problem came up under the order as to what to do with the area north of the Bronx County line. The present 25th District includes the County of Putnam. The simplest solution seemed to be to add a piece of the excess population from the 25th to the less populated 26th. That (36) piece, as I have indicated before, and as indicated in the brief, is the 9th Ward of the City of Yonkers plus the 1st, 10th and 12th Election Districts.

The only other changes that were made in that area were to maintain all of Rensselaer County in one Congressional District rather than having the split across the river at several wards of Troy connected with Albany and Schenectady, and to move one county up from the Lake George-Champlain Congressional District into the St. Lawrence River Congressional District, thereby bringing all of the areas into more or less equal and more or less groups of counties.

I don't think that there is anything more, except to indicate that the interim report with respect to the 1960 figures goes into the matter fairly thoroughly. The basic problem there, of course, was that the special censuses that have been taken have been taken really only to get school aid, federal aid, some sort of welfare or educational services, and they are really not interested in what people have been counted before and where they came from.

Thank you very much.

(37)

Judge Moore: Thank you.

Mr. Friedman: May I have the Court's permission to correct one arithmetical error that may have crept into Mr. Brady's comments.

In think he said that Rockaway was added to Kings County because some 110,000 population was needed and 70,000 of it came from Rockaway. On the contrary, we find that without Rockaway the population of Kings County divides almost perfectly into districts of 490,000 each,

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within one-half of one per cent, whereas with Rockaway we find that all of the Kings County Congressional Districts are approximately one and nine-tenths per cent above the norm. Rockaway was not needed to create numerical equality. It actually resulted in numerical inequality.

Judge Moore: Mr. Zuckerman.

Mr. Zuckerman: Before the next speaker, I would like to comment on a remark by Mr. Friedman that we didn't try very hard to get accurate census figures which are more recent than 1960.

In July of 1966, after this Court issued its opinion, I contacted the Bureau of the Census in Washington, and I believe Representatives of the (38) Speaker of the Assembly did likewise, and we were both informed that it would take approximately 14 months for the Census Bureau to complete a statewide census in New York State, which would mean that the results would not have been ready until the fall of 1968, obviously not in time for elections.

Now, in the same spirit of fair play that marked the enactment of the statute, I would like to call a representative of the New York Senate, the counsel to the Majority Leader and the Temporary President of the State Senate, Donald Zimmerman.

Mr. Zimmerman: May it please the Court, thank you, your Honors. Some of you may know this is not the first opportunity I have had to address this Court in connection with reapportionment matters. However, we are facing basically the same problem we face all the time.

At the outset, through the media of the press, et cetera, and repeatedly here three or four times in the argument, we have the ascribing of motives to Legislature. Deep psychoanalysis is being presented on the basis of trivia, bits and pieces which are completely irrelevant.

On the other hand, the plaintiffs in these (39) reapportionment cases cloak themselves with a mantle of holiness that is difficult to find outside of a church.

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The fact is, your Honors, as you well know, every line drawn on a map has political impact, and the only person who can say that he is drawing a line and he doesn't know what the political impact of his line is is, of course, an idiot.

We could have the famous ape, who sits at the typewriter and writes Hamlet, also write a reapportionment plan for New York which would be completely apolitical, but to speak about a non-political apportionment or districting scheme makes about as much sense as talking about a non-medical hysterectomy.

It is in the essence of the very nature of a districting and reapportionment plan to ascribe and to allocate and apportion political power. This is the heart of it.

If I told your Honors that outside I had a vehicle, an automobile, which was purple, which looked beautiful, which matched the inner decor of my garage, and also three of the ties that I wore, you would say that is wonderful but is it an automobile, is it a self-propelled vehicle?

(40)

If I tell you I have a districting plan that is .067, that has all beautiful circles and squares, you may say that is fine, but is it representative? That is the key, that is the heart of any apportionment plan, and that is what the State of New York has been doing for well over a hundred years.

The fact is that while Mr. Wells' plan has been three times endorsed by the major newspaper in this state not one member of that paper has ever seen a map of Mr. Wells' plan. And there is not now and has never been in this state a more ruthlessly gerrymandered map than the one proposed in Plaintiffs' Exhibit C.

I have the maps in front of me and with your permission later I may display one or two of them. But just in cursory form, Mr. Wells' plan is designed to produce 31



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Democrats and 10 Republicans in the 1968 election. That is its purpose, and it is manifest from the lines.

Now, anyone who knows the political history of this state knows that that is not a representative group to send to Congress. We are not a 3 to 1 state against the Republicans. Republicans (41) have Column A in this state not by any trick or device, but by the fact that they have for over 20 years continuously polled the largest number of votes in this state. And that is the essence of a reapportionment plan or a districting scheme. It is to produce representative districts.

Now, a lot of loose talk has been heard in this case, and in other cases, about gerrymandering, as if gerrymandering relates solely to the question of the shape of the district. That is not so, your Honor. There is no question that Governor Gerry's plan was wrong in Massachusetts not because he had a snake or a dragon that may disturb somebody's aesthetics; it doesn't bother me—it was wrong because it distorted the political result in Massachusetts. And Mr. Wells' plan is a gerrymander in Brooklyn and in the Bronx, and in New York and in Queens, because it is deliberately designed to prevent the election of any Republican Congressman in the City of New York. Now, that is the essence of it, your Honor.

We have had some talk about Queens County, and about the bizarre shapes which have appeared. Now the 6th District in Queens is not a model of compactness, (42) and with your Honor's permission I would like to put this map on the board for just a moment.

This map represents Chapter 8, which is the chapter before your Honors, overlaid over the Assembly Districts in the County of Queens.

Now, as your Honors may recall, these Assembly Districts were the product of a distinguished judicial commission appointed by the Court of Appeals consisting of

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Judges Bromley and Froesell, Mr. Marden, Mr. Brady, and Mr. Jaeckel.

This is the 6th District. Your Honors will note that the upper prong—and it is a prong, there is no use calling it anything else—encompasses all of the 22nd Assembly District. Where did the 22nd Assembly District come from? It came from the Judicial Commission. Your Honors will also note that this district follows all of the 20th Assembly District. Again, a district which was the product of the judicial commission. Now it is no secret. These (pointing to the 20th and 22nd assembly districts) are the two Republican districts in eastern Queens.

Now, this map, as Mr. Brady explained, which is before your Honors now, is the product of the (43) adjustment of the 1960 map. There was no attempt made by the Legislature under the conditions which presently exist to engage in a completely new districting plan. For the Legislature to have attempted that is unrealistic, entirely unrealistic, not only from a time point of view but from the political situation as it existed in this state. There is a real politik here, not the theoretical ivory tower business you have been getting.

In 1961, when this basic plan was devised, the question came up: is this a fair plan? You see, your Honor, fairness is a concept with which this Court is well familiar. This Court is being asked to invoke its equity powers, and I suggest to you that this is a fair plan for Queens County while Mr. Wells' plan is unfair.

In 1960, the Republican candidates for congressional office in this portion of Queens—that is, mainland Queens—held almost 43 per cent of the vote 43 per cent of the vote, and they elected only one Congressman.

So that the Legislature had before it the rational policy of making the districts in Queens County representative, and introducing an element of (44) proportionality in the

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formation of the districts. The Legislature took it as its duty that it was more important that the districts be representative than that they be pretty.

Now, of course, if you drew a line like this, as Mr. Wells does basically, you get four lovely districts, but they are non-representative. They are non-representative. There is no reason why in a county which will have four Congressmen the Legislature cannot apportion in a manner so as to give some recognition—some, not even proportional, mind you, but some recognition to a minority which captures 43 per cent of the vote.

Now, even in 1966 over 30 per cent of the vote in this county was cast for Republican candidates, and, indeed, if you ignore minority party candidates it gets closer to 40 per cent.

So you see, your Honor, this is the heart and key to the reapportionment questions that have been before the courts. It is not so much, your Honors, a question of contiguity and compactness. These are masks for the sophistry of people who are changing, attempting to change the political result. It is a rational policy for a state in a multi-district (45) county to design the districts so as to provide the minority with some representation. I am prepared to stand on that in this court or in any other court.

And the same thing occurred in Bronx County, I can demonstrate it on the map, where the district was designed to provide a 35 or 37 per cent in 1960 minority with one Congressman out of four.

This is not the first time we have had this. You see, the leading newspaper in this state immediately comes out and says "Ruthless gerrymandering." They have never seen the maps of the other fellow, but they know his maps are good and the Legislature is motivated politically.

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I would like to show you now, although I won't put it up on the board, just for an example, Mr. Wells' plan in Nassau County.

I attempted to draw a map of Mr. Wells' plan in Nassau County. I did not succeed because his descriptions are inadequate. But considering where his lines started and ended I assume he connects it some place here.

But this is the interesting shape I would like your Honor to see. This great goose which exists on the (46) south shore. What is its purpose? If your Honors will examine the maps in front of you supplied by the Attorney General, you will see the present districting plan for Nassau County with very few exceptions follows the major town lines that exist in Nassau.

Look at this. What is this designed to do? One doesn't have to be any great seer. One doesn't need PhD's and articles to find out what this is designed to do. Why are the people in Garden City suddenly in the same district with the people in Massapequa Park? Another town, by the way. Why are they there? Because they are Republicans. This is a crude, and I might add futile, attempt to create a very Republican district in Hempstead with the hope that these two districts would go Democratic. Also the essence of fairness, since the Democrats of Nassau County have never polled 50 per cent of the vote. So all he wants is two out of three in the county.

Your Honors, I would like to return now to another aspect of the apportionment question, and that is the question of regionalism.

(47) Mr. Brady has said that New York City has been separately treated. We have a slight difference here. I like to view it as the five counties which constitute New York City have been, their integrity has been recognized as counties. We have a long history in this state of recogniz-



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ing the integrity of county lines and town lines. There is no such history for city lines. This is a figment of Mr. Wells' imagination which he has tendered to this Court and to other courts on many occasions, and it is designed to effect a very simple result, your Honor.

The fact is that north of New York City the only way you are going to get Democratic districts, whether it is for Assembly or Senate or Congress, is to concentrate the Democratic majorities which exist in the cities.

Now here is another illustration of his excellent shapes which everyone has endorsed out of hand—and this is a highway map of his upstate plan—you see, he has gone into the County of Monroe, which for 70 years—70 years—has been divided along the Genesee River, which of course bifurcates the City of Rochester, and (48) plucked out the City of Rochester as if it were a living entity separate from the whole County of Monroe and joined it with a couple of border towns to get him into Orleans.

This again is an attempt to elect to the Legislature another Democratic Congressman in a county where they are producing 40 per cent of the vote. His 40 per cent is recognized and mine is buried.

Now, the apex of this sophistry was reached in the so-called professor's plan which was tendered to the Court of Appeals in 1966. It was uniformly rejected. As I say, they mask this by talking not about the politics which is what they are really doing if they talk otherwise. They say "In upstate New York, in counties outside the City of New York, it is better to have a district which is homogeneous." That means you put all the Democrats together. "However, when you get into the City of New York we are interested in heterogeneous districts; we think it is proper to put middle classes together with the slums." (49) Which means you chop up the Republicans. That is what that means.

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There have been several comments made to the Court that Plaintiffs' Exhibit C be accepted instead of the plan introduced. One of the major districts of this state is the southern tier. If I can impose on your Honors for one more moment I would like to put up one more map which will get me to Lewis County, with which I am sure your Honors are somewhat troubled.

Your Honors, in doing any map of upstate New York, for any purpose, Congressional, Assembly or Senate, it is essential that you start with your major population groupings, and these are contained in what the Bureau of Census refers to as the standard metropolitan districts. Now, these consist of Erie-Niagara Counties, Monroe County, Onondaga and Oswego, and the Syracuse complex—Oneida, Madison and Herkimer clustered around Utica; Broome County around Binghamton; and in the Albany area, Albany, Schenectady, Saratoga and Rensselaer.

Now, it is quite obvious—and this was the situation in 1961 and I am personally familiar (50) with the situation in 1961 as I was with the situation in 1951 so I am not speaking to your Honors out of speculation as to people's motives. I was there, I was in the map room, I know who was working.

We come up from New York. Putnam was put in with Westchester. That is not a new concept, because if your Honors will examine the maps which are in the Legislative Manual for the State of New York of 1967 you will see the Judicial Commission also grouped Putnam with Westchester in the formation of a Senate District. Not all of it. Of course, it was a much smaller district by definition but Putnam's alignment with Westchester is natural.

I might add during the course of the work Mr. Brady and I were engaged in there were some reports in the press that Putnam County might be removed from the

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25th District and placed in the 28th District, which would also have accomplished some sort of numerical parity.

Without exception, every communication we received from the people in Putnam County requested that they be kept in the Westchester District. This is the natural flow of their activity, and this is the natural flow of their alignment. They wished to remain with (51) Westchester.

When we come to the Albany district, the numbers, when you put up the numbers, it is quite obvious that of the four counties that are grouped together, you can't put all four of them in one district. There comes a point where you cannot retain the integrity of a standard metropolitan statistical area.

The Legislature quite naturally took Albany and Schenectady and kept them together. Rensselaer had a long history of being aligned with the other counties on the eastern bank of the Hudson River and so that was not an abnormal arrangement.

When we came over to Utica again we were able to, as your Honors can see, completely keep the standard metropolitan area together. We kept Utica together with Madison and Oneida, and this is, by the way, the Mohawk Valley complex. There are cities, many cities, as your Honor can see from circles, located along the Mohawk Valley, the railroad, the Thruway, et cetera.

Onondaga had enough population to support its own Congressman, so Onondaga had to be removed.

Niagara and Erie were an economic, a statistical, and in many areas of the law of the State of New York (52) have been treated as a unit, and they were kept as a unit. It is true that that resulted in some elevation of the figures in these counties which would have been reduced if this thing had been applied like a herring on a board and sliced up; as you reached 400 you put the knife down. If that was the only policy New York wished to observe it could

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have done so. But we were trying to satisfy other rational considerations.

Political parties in this state are organized basically on Assembly Districts in the City of New York and on a county level upstate. To take a small county or even a large county and remove a portion of it is to create trauma. We sought to avoid that to the extent possible, and as your Honors will note there isn't a county line upstate that is divided except the counties which by their numbers have too much population and would be required to be divided under any system.

Having pulled out Albany and Schenectady and having pulled out the Oneida, Erie complexes, the question comes up what did you do with Monroe.

Again we have a history. If your Honor will (53) look at the maps of Judicial Commission you will see that Monroe has had added to it a number of counties that are on its periphery and do have economic interests that flow towards the City of Rochester. The Legislature took Wayne and the other intervening ones, all these Genesee, and among all these counties was able to create two nearly perfect districts. I think they are at 4.10. They are as close as you can get.

What is the rest of the state now? We have a thing called the southern tier. They have an economic unity. These are a particular type of county. There isn't a major city down here west of Binghamton on the south.

Judge MacMahon: I come from Elmira. That is not very politic.

Mr. Zimmerman: I am afraid I must stand on it, nevertheless.

There is an economic unit which the new road development is cementing even more—that is to say, the extension of the southern tier expressway. So the 38th is a logical



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district. It is true that you would achieve statistical equality by throwing in a bunch of towns from southern Erie, but the towns (54) in southern Erie don't want to go there. The people in Cattaraugus and the rest of them don't want them there. It is a purely professorial exercise to achieve an absolutely meaningless result, completely meaningless.

Of course, Broome needed some assistance, its population was low, and we took the adjacent counties.

We come to the north and I know your Honors are probably troubled by the statement in the brief about Lewis County. There is just no question about it, if Lewis County were moved statistical equality would be more nearly perfect. But there is a situation in northern New York with which your Honors should be familiar. It has to do with what's referred to in the trade as the blue line, otherwise known as the border of the Adirondack forest preserve, within which the state's rigorous prohibition of forever wild must be observed.

I have outlined the blue line on a road map so your Honors will get some idea of where it is located.

Even without the map you can tell where the blue line is in New York because suddenly you start (55) to get gigantic towns, physically gigantic towns, and there's nobody in them—three, four, five hundred people in these towns. That is because the blue line has an overriding and pervasive effect on the economy and the life of a community that is within it.

Naturally, if you have land that nothing can be done with, and must be left forever wild. It affects your tax base, and becomes a special condition for school aid and for multifarious purposes. Blue line counties have a unique condition. They have a unique community and bond among themselves, and have always had a relationship to one

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another which is much greater than any of their adjacent counties.

It is true that in the northern corner of Oneida County there is some blue line territory, and there is the town of Forestport, and others are pretty vacant. But the fact is Oneida's center of gravity is down near Utica. There is a town outside Utica, Whitetown, that has almost as much population as Lewis. It is a bedroom town for Utica. So that Utica's orientation, just as Herkimer or Madison, is a Mohawk Valley orientation.

On the other hand, all these counties which (56) encompass the 31st and the 30th, except Oswego, are blue line counties.

As I indicated before, there was nothing that could be done about Oswego. Oswego had to go somewhere. It is certainly far superior to put it here than in the plan that was tendered by Mr. Wells, which gets way up near Long Lake. I mean this is ridiculous.

The people in Lewis County are joined together with the County of Jefferson in an Assembly District. They have the community of interest created by the fact that they are a blue line county. Knowing that I was to appear here today the Chairman of the Board of Supervisors of Lewis County sent me the following telegram which, with your Honors' permission, I would like to read into the record.

"As the legislative representatives of Lewis County, a blue line county, we earnestly petition the Court that Lewis County be able to remain with our neighboring northern counties in the 31st Congressional District."

Obviously, moving Lewis will not change much. Certainly it will not create any unusual problems, even in the

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election. I cannot (57) ask your Honors not to do it on that basis. But I ask you to leave Lewis County where it is, to accept the disparity that exists between 31st and 32nd Districts on the grounds it exists because there is a rational state policy of keeping northern counties together. A small county like Lewis, which in the 32nd would be an appendage, a mere appendage, would have absolutely no voice in the Congressional District. But its inclusion with Jefferson, with which it does share an Assemblyman, then Jefferson and Lewis together are a force. Not a great force, but at least they are as large as almost any other single unit in the 31st Congressional District, where they can have some vote.

Your Honors have heard much about debasing the vote. Indeed, the whole reapportionment case started with the misapplication of the slogan of one man one vote to the reapportionment cases. As your Honors well know, that is a slogan that developed in England at a time when the question was opening up the franchise to all of the citizens. We have had no such problem in this state certainly for many years, and in this nation for many years, so that every person in this nation has one man one vote. What we are talking about (58) in one man one vote basically is to prevent a person's vote from being reduced to zero.

Now, your Honors, in every election in a district, as distinct from an election at large, somebody's vote counts for 100 and somebody's vote counts for zero. The fellow whose vote counts for zero is the fellow who votes for the candidate who does not win.

When I speak about fairness in apportionment cases I am speaking about the concept that we look to see how the hundreds and how the zeros add up throughout the state or within a county, and we see if they are being loaded one way, is there a political party or a group that is being

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consistently given the zeros, as, for example, the Republicans are on the Plaintiffs' Exhibit C?

On the other hand, the plan which is before the Court is basically a small modification of the existing 1961 reapportionment has produced a representative body in Congress of 26 Democrats and 15 Republicans. Nobody would be greatly shocked as a political seer if under this very plan, assuming it was used in a 1968 election, the result would swing to something like 22 Republicans and whatever the (59) remainder is, 19 Democrats, or 23 Republicans.

The point is that this plan is basically fair because it gives either political party a reasonable opportunity to capture the congressional delegation. Plaintiffs' Exhibit C is unfair because it is impossible for the Republicans to get off the ground, because they are sedulously and uniformly grouped in 90 and 100 per cent districts, while Democratic minorities upstate are kept together so as to extract their plurality.

One other little thing on Plaintiffs' Exhibit C, to demonstrate how impossible it would be to use it for the 1968 election. Mr. Brady has referred to the work that needs to be done on permanent personal registration if election Districts were divided. I point out to your Honor that I took an Assembly District map—I haven't got it here, if I opened it up it would occupy the entire area between the bench and myself, it is 30 feet, if you place the Assembly Districts together. It is a massive map. I traced just two of the maps for the 6th and 7th Congressional District and they divided 20 Election Districts in Queens County alone. Based on that projection I would say well over 100 (60) districts are divided in the City of New York alone.

For the Board of Elections to take those 150 Election Districts, divide the books, create new districts, notify all



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the candidates, would do more harm in equity to these potential persons voting in primaries, assuming there were a Primary in their area, than any slight numerical variance which is produced by the fact that we use plan 1 as against plan 2.

Your Honors, it has been said many times—there was much said about what went on in Kings County that it was done for purpose 1 and purpose 2. This assumes there was some monolithic agency operating in Albany that had carte blanche to draw whatever line they wished in Kings County.

I have examined Plaintiffs' Exhibit C for Kings County, an interesting document. I have laid that map over an Assembly District map of Kings County. I have laid Plaintiffs' Exhibit C over it. And I picked my way carefully.

You will notice the way it splices right through the 56th Assembly District, which is the key, the heart of the Bedford Stuyvesant Assembly Delegation. The 56th is the heart of Bedford Stuyvesant. The line (61) goes right through it.

Recognizing their difficulty, the plaintiffs today have attempted to run away from this map. They talk about how great the 12th Congressional District is in Chapter 8, and that is a model of compactness. Obviously they can't have their cake and eat it. If the 12th is a model of compactness the only reason is because we didn't pull the extra 40,000 out of Queens. That would have shifted all the lines.

You will also note—you see, it is the standard they keep oscillating on. They are talking about communities. You can't divide my community. The other fellow's community is perfectly all right to divide. That is all right, because that is the other fellow. We have heard so much about the

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housing projects that have been divided. There is a line that runs right through one of the largest housing projects in the Brownsville East New York section right here. That is perfectly all right.

If I were a man to ascribe invidious motives to people, which I am not, your Honor, I would say that this plan was designed to put all the Jews in (62) Brooklyn into two districts, and that is exactly or practically what it does, by the way.

I don't know what the population here is, but that is the basic intent. This meandering line which follows Jamaica Bay excises the non-Jewish portions of most of the Assembly Districts down here.

Now, I don't know what motive there could be for this kind of activity, and of course we in the Legislature don't engage in that kind of practice. But I suggest to your Honors that Plaintiffs' Exhibit C has been brought here in a Madison Avenue package. They have done the wrapper up fancy, they have covered it up with slogans, but basically it is a poor package because it doesn't do the job. It is like my purple automobile. It is not a self-propelled vehicle. It is not a representative plan. The plan which the Legislature has formulated and tendered to this Court does the job. It follows rational state policies which are, one, the preservation of county lines, two, the preservation of town lines. Again, in 70 years of constitutional law we have never had a principle that cities are not being divided.

Let me stop for a moment to say this is not (63) a recent invention of Republican conspirators. Under the old Constitution Assembly Districts used to be apportioned by the Legislature to counties, and the county officials themselves, through the Board of Supervisors, used to create the Assembly Districts within the county. Time after time, in Albany County, for example, when we would apportion

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two or three Assemblymen to Albany County the Albany County Board of Supervisors, even though it had the option on the numbers of making a district wholly within the City of Albany, uniformly divided the City of Albany, in the formation of Assembly Districts in the County.

The same was true in Binghamton, Syracuse, Utica, although not so much recently, but it was true at least before the Commission, and it is certainly true in Rochester, and in Buffalo.

So that we followed the rational policy of not dividing counties and towns. There is no comparable policies for cities, and this Court should not permit these plaintiffs to invent it by their papers and pull an operation bootstrap.

Another rational policy the state follows is grouping counties together that have a community (64) of interest. I never finished my map, but as your Honors can see having put the north together and the southern tier together and the standard metropolitan statistical areas together, that is where the 35th comes from. It is left. And it is not a bad district. We have no representative from the 35th in front of us, or from any county in the 35th, asking for equitable relief.

Two fellows from Brooklyn want to change the districts in the 35th. Now, they may be the best intentioned, but we have no representative here from the 35th. We had a roll call of 126 to 19 in which a majority of both parties voted for this bill. Most of the men who voted on this bill had no interest, I can tell your Honors this affirmatively, no direct political interest in it whatsoever. Upstate New York doesn't get too excited about Congressional Districts. It really doesn't mean that much.

So that the rational policy was grouping counties together according to their interest, as demonstrated by the history or the other economic factors available.

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And finally, and this is the most important (65) point, because we are before a court of equity, Chapter 8 does equity to the people of New York because it permits the citizens and voters of New York to send a representative body to the Congress. It is a House of Representatives, not a house of 409s. It is a house of people who fairly represent the interests of the people of the State of New York. Congressional delegation that had no Republicans from the city and a maximum of Democrats from upstate New York, wouldn't be a representative body. Thank you, your Honors.

Mr. Zuckerman: If the Court please, in view of the length of arguments this morning I will try to keep my argument short.

I have presented a 28-page legal memorandum to the Court which covers the legal arguments I have offered in defense of the statute passed by the New York State Legislature, and I will not try to repeat those arguments here.

I would, though, like to summarize very briefly these points: Number 1, the Act that was passed by the New York Legislature has followed the guidance of this Court in eliminating the wide disparities in population among the districts that (66) formed the basis for this Court's opinion last May.

On pages 9 to 12 of the memorandum I have set forth the opinions from Federal Courts in other states of the Union in which greater disparities than the New York districts have been held to conform to the requirements of the United States Constitution.

I particularly call your attention to the decision in Illinois where the Congressional Districts in Illinois were drawn by a Federal Court in conjunction with the Supreme Court of Illinois. This was a very unusual situation. And



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the districts that were approved by the Illinois Federal Court and Supreme Court contained deviations ranging from plus 7.5 per cent to minus 6.1 per cent.

I call to your attention the examples of Arizona, Texas and Florida, which are set forth in the memorandum.

I also might call the Court's attention to the decisions handed down by the Supreme Court last Monday, since they are the latest word on the subject of Congressional reapportionment.

Mr. Doskow has referred to them and I don't know why he obtains any satisfaction from them. The Indiana case that he refers to, *Grills v. Branigin*, (67) involved a situation where a districting plan was drawn by the Indiana Court after the Legislature failed to produce any act in its last session of the Legislature.

The lines were attacked on the grounds of partisan gerrymandering. That is, the appellants were arguing that the lines drawn by the Court involved partisan gerrymandering and asked for a stay in the Supreme Court of the United States. The Supreme Court denied the stay.

If anything, this is in keeping with the Supreme Court's long list of cases in which they have refused to hold that partisan gerrymandering presents a cognizable issue under the Federal Constitution.

Judge Cannella: Is it an important point in that case the Legislature was out of session whereas yours is still in session?

Mr. Zuckerman: The Legislature could have stayed in session.

Judge Cannella: But they were out of session at the time the Court decided the case.

Mr. Zuckerman: But they had refused to enact the plan or were incapable of enacting the plan (68) when they were in session. The appeal was based on the issue of

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partisan gerrymandering in the application for a stay, and a stay was denied by the Supreme Court.

The other case the Supreme Court ruled on last Monday in an application for a stay was the Missouri case, Kirkpatrick v. Preisler. This is probably the case most heavily relied on by plaintiffs. As far as I know, it is the only case in this country in which a Federal Court rejected an act of a Legislature on the ground that there was a better plan, although in that case even the so-called better plan had been one of the bills that had been introduced in the Legislature.

The Missouri Federal Court had rejected the Legislature's act and had ordered this other plan to be put into effect.

Now, in the application for a stay in this case the Supreme Court granted a stay. They ruled that the 1968 Legislature—that the 1968 Congressional Districts shall be governed by the Act that the Missouri Federal Court held was unconstitutional. This was a very unusual situation. It's been very rare. The Supreme Court in recent years, number 1, has (69) stayed an Act of a lower District Court, and, number 2, it has been very rare that the Supreme Court has taken jurisdiction of an appeal in a Congressional districting case since the Wesberry v. Sanders case. I am not a betting man, your Honors, but I would be willing to bet in this case the Supreme Court is going to reverse the decision of the Federal District Court in Missouri. Otherwise, there is very little sense for them to have taken the appeal. Also, if you read the short cryptic comments of the Supreme Court in granting a stay, I think it is evident what the Supreme Court is going to do.

Let me also remind the Court that with all this talk about partisan gerrymandering the Supreme Court still has

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not held that this raises a cognizable issue, and if ever there was a case which was going to establish precedent in this area it is hardly this case, in the absence of any evidence of partisan gerrymandering.

In fact, looking at the realities of this situation it would have been impossible for there to be partisan gerrymandering on the scale that has normally been discussed in these other cases. The lines couldn't have been drawn to favor the Democratic (70) Party or the Republican Party, since the Assembly is controlled by the Democratic Party and the State Senate is controlled by the Republican Party. Obviously, if a plan was going to pass both Houses, as it did here, it had to be fair to all the political interests of the state, and I might add, as I have shown in the brief, the Act was passed by overwhelming majorities in both the Assembly and the State Senate. Hardly a gerrymander. If these districts can be referred to as anything, I have referred to them as a neutermander, since the attempt was to prevent either party from obtaining an advantage over the other party.

Finally, a word with regard to the attacks made on the Brooklyn districts by Mr. Doskow. He talks about the need to try to conform to community lines in Brooklyn. I have shown in my brief that there are at least 20 recognized communities in Brooklyn. There are only six Congressional Districts at the most that could cover Brooklyn. Obviously, communities have to be cut in the division of Congressional Districts.

As far as Flatbush is concerned, it should be noted that Flatbush was divided between the 12th, 13th (71) and the 16th Districts in the 1961 plan, and Bay Ridge, also, was divided in the 1961 plan. There is nothing new about that.

One of the petitioners, Mr. Starace, claimed Staten Island was historically connected with Bay Ridge. I don't

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know where he gets his history from, but from 1901 to 1952 Staten Island was joined with a lower part of Manhattan in the formation of Congressional Districts.

Finally, your Honor, I wish to summarize by saying what we have here is an Act of the Legislature that was passed by the Representatives of all the people of the State. It was not drawn by political scientists who represented the Liberal Party and the International Ladies Garment Workers Union. He did not have to corral support in the Assembly and Senate in the enactment of a restricting plan. This plan was passed by the Representatives of the people of the state. It has eliminated the disparities in population which formed the basis of this Court's opinion last May. And I ask that this Court declare that Chapter 8 of the Laws of 1968 is in conformity with the order of this Court of last July, and the requirements of the United States Constitution.

(72)

Thank you.

Mr. Levine: Your Honor, may I have two minutes more?

Judge Moore: All right.

Mr. Levine: I would like to correct one error. Despite the oratory of Mr. Zimmerman to the effect that the New York Times did not have plaintiffs' maps, I wish to state that the New York Times had our maps more than a year ago, and no one need say the New York Times cannot be brainwashed. This represents their opinion. Let it stand.

Mr. Zimmerman, although pointing out the compactness of the lines, runs contrary to the spirit and the decision of this court when he frankly admitted that politics enters into the consideration of the drawing of these maps. And this one of the items in your Honor's decision—that questions of politics be thrown to the winds. It is admitted here practically that politics does enter into their decision.



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If your Honors do not go along with the Wells plan, may I offer the alternative plan which is referred to in my brief, and here are strict lines to comply with the modifications in those areas as compared to the entire state, if your Honors decide (73) to take the Wells plan as modified and as suggested in our brief. May I hand these up, please.

That is all.

Thank you.

Mr. Doskow: May I also have one minute, your Honor?

Judge Moore: You can have the minutes Mr. Levine did not take.

Mr. Doskow: I would like to point out this very interesting bit of history we got was a history which was held unconstitutional both with respect to the State Legislature and the Congressional Districts.

Mr. Zimmerman's report about representative plan in effect he described as something that has been going on in the state for a hundred years or more. That is what has been held unconstitutional.

The words of this Court, "Let not any considerations of race, sex, economic status or politics cross their minds," have been admittedly deliberately disregarded by the Legislature.

Now, I call your Honor's attention particularly to the affidavit of Mr. Starace which deals with Staten Island. He is a Republican district leader, (74) by the way, in the Bay Ridge section. The way in which the Bay Ridge section of Brooklyn has been cut up Mr. Zimmerman acknowledged the propriety of following Assembly District lines. Of the 23 in Brooklyn there are only 2 the lines of which aren't cut by the Legislature in this plan.

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Finally, the distinction between the cities and the towns was something that I must say, on the basis of my ignorance of political history, eludes me entirely. The notion there is more community of interest by town lines than city lines I find utterly amazing.

Mr. Zuckerman: One final word, your Honors. I want to call again the Court's attention to the fact that this reference to considerations of politics cannot find any basis in the order that was entered by this Court. The order of the Court says there shall be no consideration of race, sex, or economic status, period, and I believe that language is from a Supreme Court of the United States opinion. Nobody here has claimed that these lines were drawn on the basis of race, sex or economic status.

Thank you.

Judge Moore: Very well. We will conclude (74a) the argument now, and enter into our own deliberations.

Thank you, gentlemen, for clarifying the situation, and we will stand in recess.



**JUN 26 1968**

JOHN F. DAVIS, CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM 1968

No. **238**

DAVID I. WELLS,

*Appellant,*

—v.—

NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

*Appellees.*

**JURISDICTIONAL STATEMENT**

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IN THE  
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DAVID I. WELLS,

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—v.—

NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

**JURISDICTIONAL STATEMENT**

Appellant appeals from the judgment of the United States District Court for the Southern District of New York, entered on April 1, 1968, denying the objections of appellant and others to the constitutionality of Chapter 8 of the New York Laws of 1968, and holding that the con-



gressional districting plan set forth in the said Chapter 8 complies with the opinion of that District Court, dated May 10, 1967, and the order dated July 26, 1967, and is in conformity with the Constitution of the United States.

### Opinions Below

The opinions of the District Court for the Southern District of New York are reported at 273 F. Supp. 984 (May 10, 1967), and 281 F. Supp. 821 (March 20, 1968).

### Jurisdiction

This suit was brought under Article I, Section 2 and the Fourteenth Amendment of the United States Constitution, and under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 1343(3). Declaratory relief was sought under 28 U.S.C. §§ 2201, 2202, and 2281 et seq. The jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

### Questions Presented

1. Whether the equal-population principle of *Weber v. Sanders*, 376 U.S. 1 (1964), is violated by a congressional districting plan in which the population variations among the districts could have been materially reduced and the degree of compactness of the districts could have been materially increased by adoption of any of several alternative plans, including those presented to the court by appellant.

2. Whether a congressional districting plan concededly drawn to preserve political "proportionality" constitutes a gerrymander forbidden by Article I, Section 2 of the Constitution of the United States, or by the Equal Protection or Due Process Clauses of the Fourteenth Amendment to that Constitution.

**Statute Involved**

Chapter 8 of the New York Laws of 1968.

**Statement**

Appellant, David I. Wells, is a citizen of the United States, and a resident of Queens County in the City and State of New York. He is a taxpayer and a registered voter of said county, city and state. As such he is entitled to vote for candidates for the House of Representatives in the sixth congressional district of New York State in which he also resides.

Appellant was one of two plaintiffs (the other not being joined in this appeal) who filed this suit on June 29, 1966, in the United States District Court for the Southern District of New York against appellee Nelson A. Rockefeller, Governor of New York State, and other state officials directly implicated in the process by which the Members of the House of Representatives from New York State are chosen by the voters of that state.

In the original complaint the then plaintiffs asked for the convening of a three-judge court which was in turn asked to hold invalid and unenforceable Article VII, Section 111, Chapter 980 of the Laws of 1961 of New York State (effective from January 1, 1962) as being contrary to Article I, Section 2 and the Fourteenth Amendment to the Constitution of the United States. Accordingly, plaintiffs asked that the court restrain defendants Rockefeller, Lefkowitz, and Lomenzo from in any way implementing the complained-against provisions of the election laws. Appellants further asked the court to direct defendants Wilson and Travia, in their capacity as legislative leaders in the State of New York, "to take such action as may be directed by this Court to secure compliance with the Constitution of the United States."

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A three-judge court was convened to hear the matter, and the issues were framed by plaintiffs' motion for summary judgment and defendants' motion to dismiss the complaint. Relevant facts about the statute were these: On the basis of the 1960 census figures Congress reduced the number of New York's Congressional Representatives from 43 to 41, and Chapter 980 was enacted to establish the boundary lines of these 41 districts. However, as the court below found, the districts did not satisfy the test of "equal representation for equal numbers of people" established in *Weasberry v. Sanders*, 376 U.S. 1, 18 (1964). For example, the twelfth district (part of Kings County) had a population of 471,001, 15.1 per cent above average, while the adjoining fifteenth district (also part of Kings County) had a population of 350,635, 14.3 per cent below average—a spread between these two contiguous districts of 29.4 per cent.

The court, after pointing out other excessive population differentials, observed that further comments on "the seemingly bizarre structure of the present Congressional districts were unnecessary" to the holding of unconstitutionality. 273 F. Supp. at 987. Accordingly, the court held that "reapportionment is required." *Id.* at 989. The court said the Legislature should "divide the State into 41 substantially equal parts, provided they be reasonably compact and contiguous." *Id.* at 991. As to timing the right was declared to be a present one; accordingly, the District Court ruled that no further elections could be held based on the invalid districts. The court ruled (at 992):

a plan must be created by the 1968 Legislature which will provide for congressional districts in conformity with the Supreme Court's precepts so that the People of the State of New York may vote for

their congressmen from such districts in the 1968 congressional elections.\*

The judgment of the District Court was affirmed per curiam by this Court on December 18, 1967. 389 U.S. 421 (1967). Mr. Justice Harlan dissented, believing that "the time has come for this Court to provide clearer guidance to the lower courts on the proper remedy in reapportionment cases." *Id.* at 424.

The New York Legislature took no action until February 26, 1968, a date so late that it was impractical to secure effective review of a district court decision upholding the validity of the revised districts. It thus became necessary to hold the 1968 election under the new plan unless (as no one favored) election of all 41 Congressmen should be at large.\*\*

The plan adopted by the Legislature on February 26, 1968 (Chapter 8 of the Laws of 1968) left population disparities ranging up to 6.6 per cent variation from the state average district population. The "lack of compactness" complained against in the original complaint, which had been described as "bizarre" by the court, remained unchanged in many districts and little changed in others. Although the District Court had said in its 1967 opinion that "there is a burden on the proponent of any districting plan to justify deviations from equality" (273 F. Supp. at 987), defendants (hereafter the State) advanced no jus-

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\* The court also invited legislative consideration of population statistics later than the 1960 census figures, suggesting a projection to December 31, 1966. 273 F. Supp. at 992. However, this was rejected by the Legislature and not further adverted to by the court in its subsequent opinion. 281 F. Supp. 821. The issue is not raised in this case.

\*\* The hearing before the three-judge court was on March 12, 1968; the opinion was delivered on March 20; and judgment was entered on April 1, the day before the first day to circulate nominating petitions for the primary to be held on June 18, 1968.



tification for continued population deviations and continued lack of compactness other than the exigencies of time and the legislative purpose to disrupt existing districts as little as possible.

The District Court, which had retained jurisdiction of the action, received objections, including those of intervenors, at a hearing on March 12, 1968. The State sought to justify the plan on the basis of the explanation for the changes that appeared in the Interim Report of the Joint Legislative Committee on Reapportionment.

Intervenors Frederick W. Richmond, a resident of the fourteenth district, Eugene Victor, a resident of the old twelfth and the new fifteenth district, and Armand J. Starace, a resident of the Bay Ridge area of Kings County, all complained of the way the districts were drawn in that county. They argued that the integrity of neighborhoods had been violated and that the new lines represented bipartisan agreement to protect incumbents.

Intervenors Mary Leff and Kathryn Goldman objected to the new lines for the twenty-first and twenty-third districts in Bronx County.

Intervenors Andrew Cooper, Paul S. Kerrigan, and Joan C. Bacchus were primarily interested in Kings County districts. John R. Pillion also intervened.

Intervenors Samuel I. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H. Fox objected to the division of their community, Crown Heights in Brooklyn, between the new tenth and twelfth districts.

In an opinion announced on March 20, 1968, the three-judge court upheld the plan, observing that it would give the voters "an opportunity to vote in the 1968 and 1970

elections on a basis of population equality within reasonably comparable districts." 281 F. Supp. at 826. This appeal is taken from the judgment and order entered pursuant to that holding.

### The Questions Are Substantial

2 The issues in this appeal are in part similar to those in *Kirkpatrick v. Preisler*, No. 1116, and *Heinkel v. Preisler*, No. 1117, in both of which jurisdiction was noted on March 4, 1968, 390 U.S. 939. In these two cases, whose earlier history was traced in *Preisler v. Secretary of State*, 257 F. Supp. 953 (W.D. Mo. 1966), aff'd per curiam, 385 U.S. 450 (1967), the three-judge district court held in its most recent opinion on December 12, 1967, that the congressional districts established by the Missouri Legislature were invalidly constituted. This Court, in noting probable jurisdiction, granted a stay of the judgment of the lower court pending final decision on the appeals, denied a motion to advance, and allowed the State of Missouri to conduct its 1968 elections pursuant to the 1967 statute which had been successfully challenged in the court below.

In those cases, as in the present proceeding, a principal issue relates to the claim of excessive and therefore unconstitutional population disparity among election districts. In those cases, as in the present proceeding, the 1968 elections will be held on the basis of the districts established in the challenged statute. The noting of probable jurisdiction in Numbers 1116 and 1117 for argument in the October Term 1968 indicates this Court's recognition of the need for further clarification of the meaning of the equal-population principle for the guidance, not only of the Missouri Legislature, but as well for the benefit of the many legislatures throughout the country which in little more than two years will have to redraw district lines for congressional and state legislative election districts. The present case, which acutely presents this issue, as well as

a classic instance of gerrymander for partisan advantage, is an ideal case to consider along with the Missouri case. Appellant asks that probable jurisdiction be noted and that this case be set for argument with Numbers 1116 and 1117.

Since 1964, when this Court first held that substantial population equality is a constitutional requirement in congressional districting (*Wesberry v. Sanders*, 376 U.S. 1) and in state legislative representation (*Reynolds v. Sims*, 377 U.S. 533), the continuing importance of the problem has been manifested by the necessity for this Court's passing on a number of further issues. The more significant rulings include the following: *Scranton v. Drew*, 379 U.S. 40 (1964); *Fortson v. Toombs*, 379 U.S. 621 (1965); *Scott v. Germano*, 381 U.S. 407 (1965); *Travia v. Lomenzo*, 381 U.S. 431 (1965); *Drum v. Seawell*, 383 U.S. 831 (1966), affirming 249 F. Supp. 877 (M.D.N.C. 1965); *Burna v. Richardson*, 384 U.S. 73 (1966); *Alton v. Tawes*, 384 U.S. 315 (1966), affirming 253 F. Supp. 731 (D. Md. 1966); *Swann v. Adams*, 385 U.S. 440 (1967); *Preisler v. Missouri*, 385 U.S. 450 (1967), affirming 257 F. Supp. 953 (W.D. Mo. 1966); *Lucas v. Rhodes*, 389 U.S. 212 (1967), reversing — F. Supp. — (N.D. Ohio 1967); *Rockefeller v. Wells*, 389 U.S. 421 (1967), affirming 273 F. Supp. 984 (S.D.N.Y. 1967); *Dinis v. Volpe*, 389 U.S. 570 (1968), affirming 264 F. Supp. 425 (D. Mass. 1967); *Kirk v. Gong*, 389 U.S. 574 (1968), affirming — F. Supp. — (S.D. Fla. 1967); *Branigin v. Duddleston*, 36 U.S.L. Week 3440 (U.S. May 20, 1968), affirming — F. Supp. — (S.D. Ind. 1968).

Despite the fact that these issues have come to the Court in a variety of ways over a period of more than four years, no one suggests that all the answers essential for the guidance of state legislatures and lower courts have been provided on the equality question.

Moreover, this Court has given no direction on the important issues of compactness and the gerrymander, which are graphically presented in this case.

The way in which these issues, population equality and gerrymander for partisan advantage, are presented in this case is briefly reviewed below.

1. *The equal-population principle.* In determining what degree of equality is essential to satisfy the equal-population standard required for congressional districting, the three propositions outlined below should now be considered established. But none of these principles is satisfied by Chapter 8 of the New York Laws of 1968.

a. The standard of equality required in congressional districting is more exacting even than in state legislative districting. See *Reynolds v. Sims*, 377 U.S. 532, 577-78 (1964). The population deviations among the congressional districts in New York under the 1968 statute range from 6.6 per cent below the average congressional district population to 6.5 per cent above. The percentage spread from the smallest district to the largest in the state is 53,613, more than 14 per cent. Moreover, the population differential even between *adjacent* districts is unaccountably large. For example, two adjacent districts in the western part of the state, the thirty-eighth and thirty-ninth, differ by 53,116. In the northern part of the state the thirty-first district is 40,499 larger than the adjacent thirty-second district.

b. The obligation to seek the maximum degree of equality reasonably attainable rests on the State, primarily on the legislative branch. As this Court noted in *Swann v. Adams*, 385 U.S. 440, 443-45 (1967),\* it is quite obvious

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\* Although *Swann v. Adams* involved state legislative districting, this Court has cited the case and this principle in subsequent congressional districting cases. See, e.g., *Duddleston v. Grills*, 385 U.S. 455 (1967).



that the State could have come much closer to providing districts of equal population than it did. Appellant specifically placed before the District Court a plan, with alternatives, that revealed the practicality of establishing much smaller variations between the districts. Appellant's alternatively offered plan demonstrated that population differentials could have been substantially reduced even without disturbing county lines not already broken under the Legislature's plan, and even increasing the number of towns and cities kept intact.

The court below, in its opinion of May 10, 1967, holding the 1961 statute unconstitutional, stated that there were, under that statute, "districts where the transferral of a single county as a unit to an adjacent district would greatly lessen the present district disparity." 273 F. Supp. at 991. Identical difficulties exist in the 1968 plan now at issue.

The clearest and most obvious example relates to Lewis County, in the north central part of the State. There is a difference of 40,499 between the populations of the adjacent thirty-first and thirty-second congressional districts. If, however, Lewis County had been included in the latter rather than the former district, the population difference would have been only 5,999. And if such a change had been accompanied by a shift of Hamilton County from the thirtieth to the thirty-first district, the population difference between the thirty-first and thirty-second districts would then have been reduced to a mere 1,732.

Under the plan passed by the Legislature, the populations of these three districts are:

30th C.D. ....	415,030	(1.4% above average)
31st C.D. ....	425,905	(4.1% above average)
32nd C.D. ....	385,406	(5.8% below average)
		(average deviation: 3.8%)

But if Lewis and Hamilton Counties had been placed in districts in such a way as to keep the population differences to a minimum, the figures would have been:

30th C.D. .... 410,763 (0.4% above average)

31st C.D. .... 406,923 (0.6% below average)

32nd C.D. .... 408,655 (0.2% below average)

(average deviation: 0.4%)

Furthermore, if Rensselaer County had been placed in the twenty-ninth district and Schenectady County in the thirtieth (instead of the other way around) the sizable deviation in population of the twenty-ninth district (4.0%) could also have been substantially reduced.

Relevant to this situation is the comment of the New Jersey Supreme Court in *Jones v. Falcey*, 48 N.J. 25, 40, 222 A. 2d 101, 109 (1966).

where the deviation obviously exceeds that needed to permit the use of political subdivisions, the deviation spells out unconstitutionality, and a court must so hold unless the record affirmatively reveals a tenable basis for the legislative action.

In another situation, involving the districts at the western end of New York State, the wide difference between the populations of the adjacent thirty-eighth and thirty-ninth districts could have been completely eliminated by a more rational districting arrangement. The difference between the populations of those two adjacent districts (one of them the smallest in the State, the other the third largest) is 53,116. But if the Erie County towns of Concord, Collins, North Collins, Eden, Evans and Brant, and the Cattaraugus Indian Reservation had been placed in the thirty-eighth district instead of the thirty-ninth, and if a few minor boundary adjustments had been made within the City of Buffalo, the populations not only of the

thirty-eighth and thirty-ninth districts but of the adjacent fortieth and forty-first districts as well could have been made almost exactly equal. (The thirty-eighth district would then have a population of 421,942, and the thirty-ninth, fortieth, and forty-first districts would all have populations quite near an average of 422,431. All four districts would then deviate from the state average by a little more than 3 per cent, whereas under the districting passed by the Legislature, they deviate by 6.6 per cent, 6.4 per cent, 6.4 per cent and 6.5 per cent respectively.

The State may contend that the aforementioned Erie County towns were not included in the thirty-eighth district because to do so would have meant crossing the boundary of Erie County. However, the Erie County boundary is *already* crossed by a congressional district line: the fortieth district includes Niagara County and a portion of Erie. As the New Jersey Supreme Court stated in *Jones v. Falcey*, 48 N.J. at 37, 222 A. 2d at 107-108.

we can find no . . . justification for . . . deviations where county lines are broken and the mathematical ideal could be more nearly approached by redeployment of whole municipalities lying at the borders of the districts.

. . . the command is to achieve population equality "as nearly as practicable," and if equality would be more nearly achieved by shifting whole municipalities to a contiguous district, the draftsman has not achieved equality "as nearly as practicable," unless some other constitutionally tenable reason . . . can be shown to justify the disparity. If the lines of political subdivisions are ignored, there is no reason for not achieving mathematical equality. . . .

c. Deviations from equality require justification, and the burden is on the state to supply rational explanation for instances of inequality. See *Swann v. Adams*, 385 U.S.

440, 443-45 (1967). As the court below said in the first opinion in the present case, "there is a burden on the proponent of any districting plan to justify deviations from equality." 273 F. Supp. at 987.

In this case the State offers no reason except the alleged shortness of time (May 10, 1967 to February 26, 1968); inconvenience to election officials, voters, and candidates for office in dislocation of district lines; and the need for "proportional" representation of political interests. The unacceptability of district lines drawn to accommodate partisan advantage is discussed in Point 2 below. The other two arguments, alleged shortness of time and convenience, are equally unacceptable.

This Court has said that the right of each voter to equal representation is a present right and not one that can be casually deferred for the convenience of election officials or for the advantage of political leaders. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). The principle would be denied its principal significance, and all its immediacy, if the equal-population principle could be so easily subverted.

2. *Partisan Gerrymandering.* This Court has never squarely passed on two related questions: (1) whether "compactness and contiguity are aspects of practicable equality," as was asserted in *Drum v. Seawell*, 250 F. Supp. 922, 925 (M.D.N.C. 1966), a position with which we fully agree; and (2) whether election districts gerrymandered for purposes of racial, political, or any other kind of discrimination are constitutionally forbidden. In *Wright v. Rockefeller*, 376 U.S. 52 (1964) and *Honeywood v. Rockefeller*, 376 U.S. 222 (1964) this Court found it unnecessary to reach the question. In *Fortson v. Dorsey*, 379 U.S. 433 (1965) the Court also did not reach the question, but



commented on a closely related issue in these significant words (p. 439):

It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

We submit that the present case presents in sharp form the permissibility or not of congressional district lines drawn for partisan advantage.

In this case the District Court stated in its first opinion that the legislators must "not allow considerations of race, sex, economic status or *politics* to cross their minds." (Emphasis supplied.) 273 F. Supp. at 991. But the legislature was not faithful to that injunction. The 1968 congressional districts for New York State, as illustrated on the accompanying maps, demonstrate clearly that the lines were drawn to accomplish some purpose other than that of equality, political unit integrity, or even neighborhood preservation. The vise-like, interlocking segments of the sixth and eighth districts in Queens County make the point, as does the "horse's tail" added to Congressman Jonathan Bingham's twenty-third district in Bronx and New York Counties to make more difficult his renomination, and as does the continuing anomaly of the 200-mile-long thirty-fifth district.

If the maps leave any doubt in the viewer's mind, we submit that the remarkable candor of appellee's counsel at the hearing on March 12, 1968, tells the whole story (R. 681-82):

There is no reason why in a county which will have four Congressmen the Legislature cannot apportion in a manner so as to give some recognition—some,

not even proportional, mind you, but some recognition to a minority which captures 43 per cent of the vote.

..... It is a rational policy for a state in a multi-district county to design the districts so as to provide the minority with some representation.

### CONCLUSION

We believe these issues merit prompt decision. Appellant urges reversal and remand with directions for congressional redistricting in New York State consistent with the equal-population principle and free of partisan gerrymander, or any other.

Respectfully submitted,

ROBERT B. MCKAY  
*Attorney for Appellant*

## APPENDIX A

Population of New York Congressional Districts (1968)  
and Percentage Deviations From Average

1st C.D.	393,585	-3.8
2nd C.D.	393,465	-3.9
3rd C.D.	393,434	-3.9
4th C.D.	393,183	-3.9
5th C.D.	393,288	-3.9
6th C.D.	434,615	+6.2
7th C.D.	434,750	+6.2
8th C.D.	434,552	+6.2
9th C.D.	434,770	+6.2
10th C.D.	417,122	+1.9
11th C.D.	417,090	+1.9
12th C.D.	417,298	+1.9
13th C.D.	417,040	+1.9
14th C.D.	417,080	+1.9
15th C.D.	417,093	+1.9
16th C.D.	417,478	+2.0
17th C.D.	390,742	-4.5
18th C.D.	390,861	-4.5
19th C.D.	390,023	-4.7
20th C.D.	390,363	-4.6
21st C.D.	390,552	-4.6
22nd C.D.	390,492	-4.6

23rd C.D.	390,228	-4.7
24th C.D.	390,057	-4.7
25th C.D.	420,146	+2.6
26th C.D.	420,467	+2.7
27th C.D.	409,349	—
28th C.D.	396,122	-3.2
29th C.D.	425,822	+4.0
30th C.D.	415,030	+1.4
31st C.D.	425,905	+4.1
32nd C.D.	385,406	-5.8
33rd C.D.	415,333	+1.5
34th C.D.	423,028	+3.3
35th C.D.	386,148	-5.7
36th C.D.	410,943	+ .4
37th C.D.	410,432	+ .3
38th C.D.	382,277	-6.6
39th C.D.	435,393	+6.4
40th C.D.	435,684	+6.4
41st C.D.	435,880	+6.5

maximum deviation: 6.6%

average deviation: 3.8%





**SUPREME COURT, U. S.**

Office-Supreme Court, U.  
**FILED**

**JUN 26 1968**

**JOHN F. DAVIS, CLERK**

**IN THE**

**Supreme Court of the United States**

**OCTOBER TERM 1968**

**No. 238**

**DAVID I. WELLS,**

*Appellant,*

**—v.—**

**NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LO-MENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,**

*Appellees.*

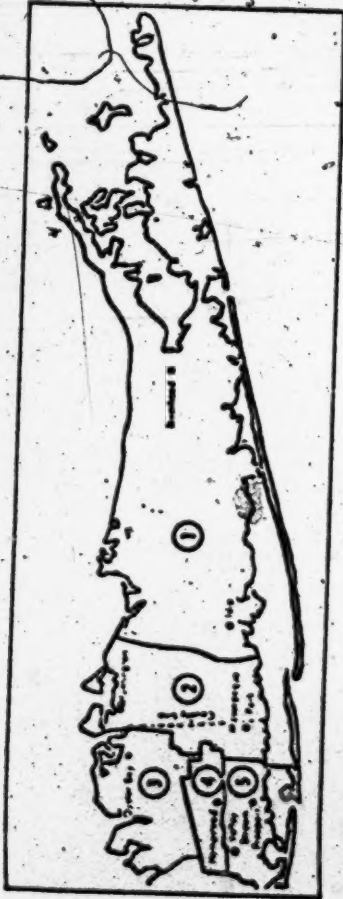
**SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT**

**ROBERT B. MCKAY**  
**40 Washington Square South**  
**New York, New York 10003.**  
*Attorney for Appellant*

**APPENDIX B****Map of New York State Congressional Districts****(Photoprint)**

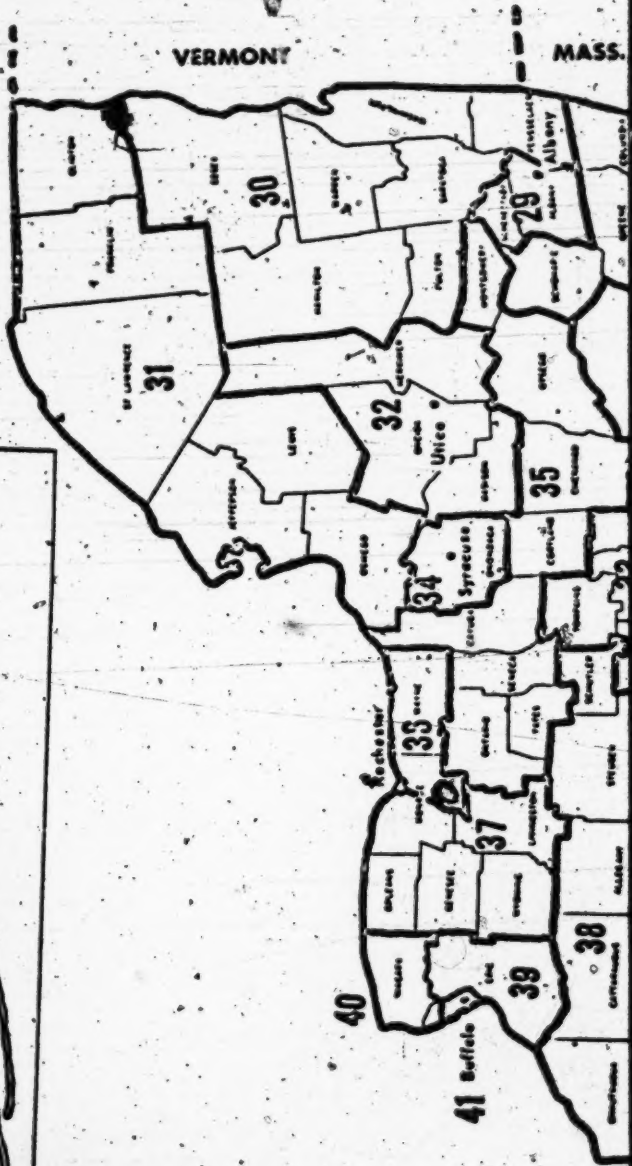
*[For the convenience of Court and Counsel this  
Exhibit is bound in on the opposite page.]*

# New Congressional Districts



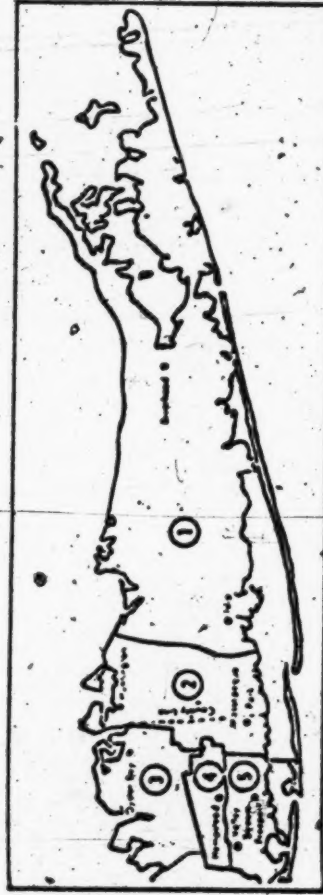
Long Island

CANADA

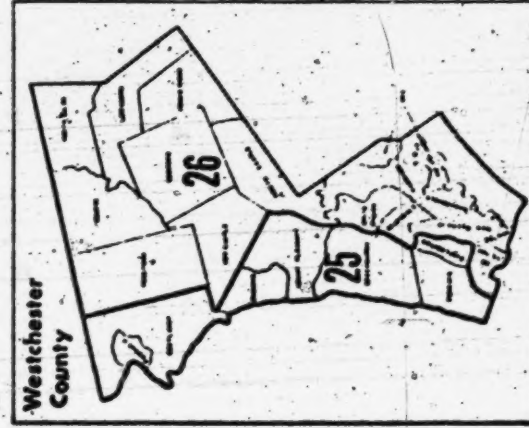
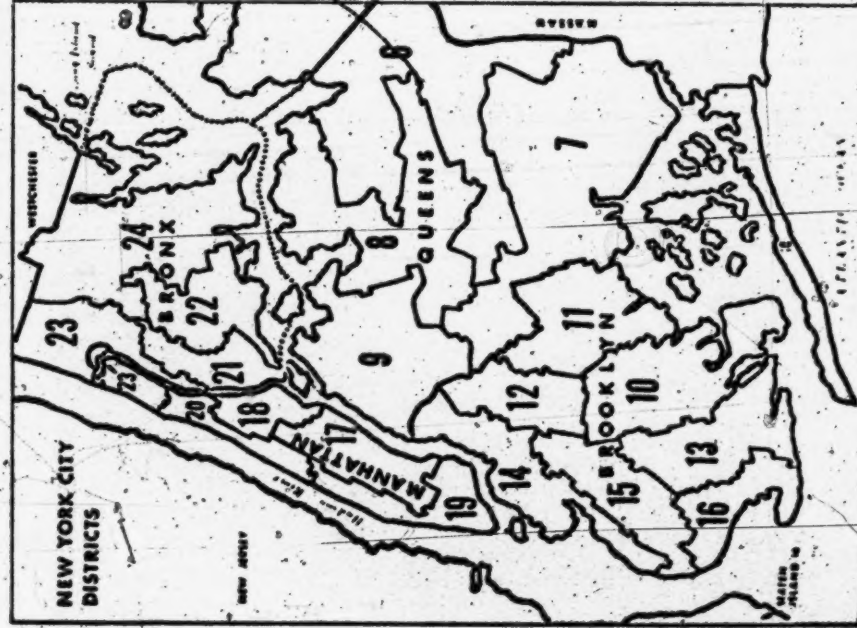
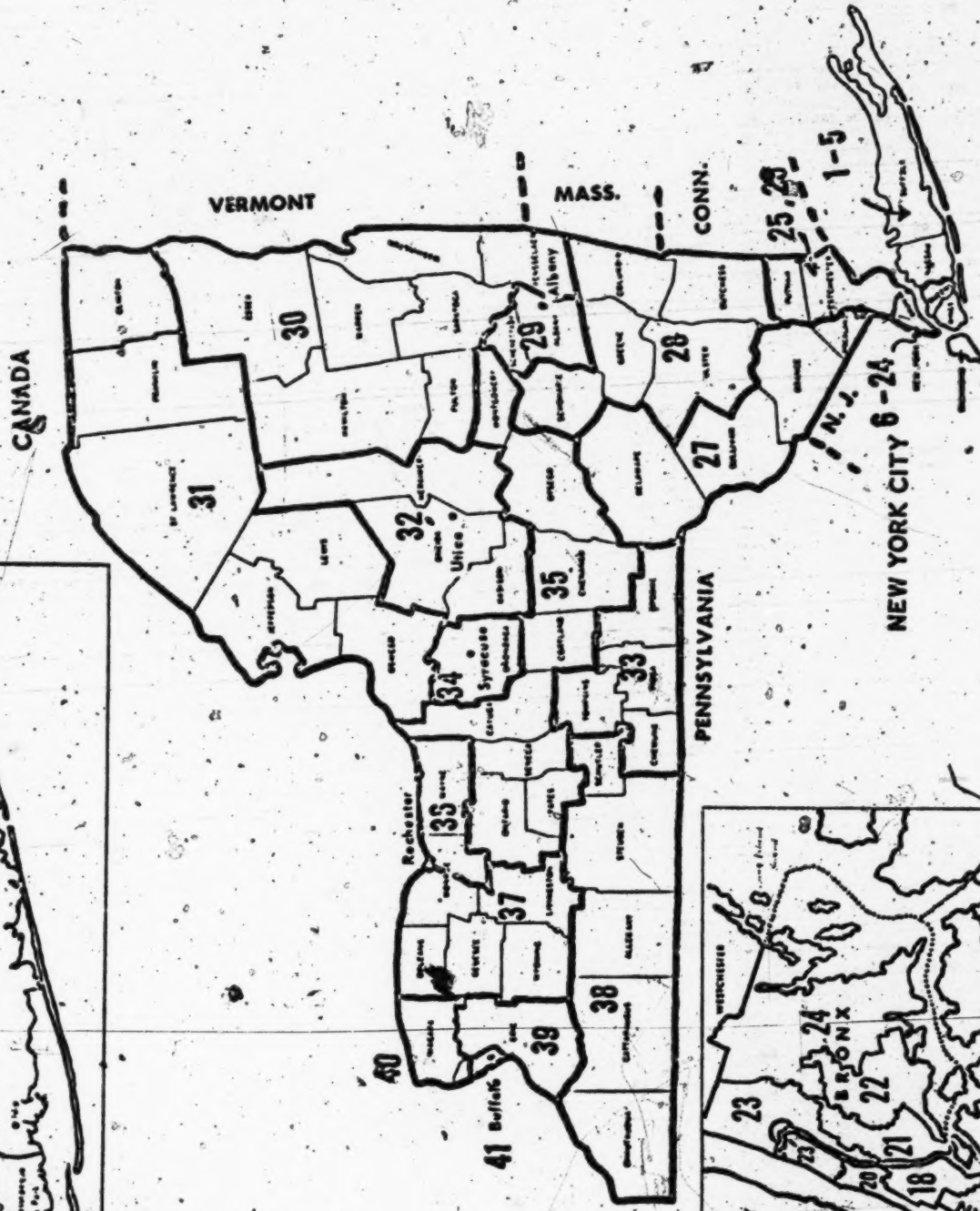




# New Congressional Districts



Long Island





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## APPENDIX C

DAVID I. WELLS and DONALD S. HARRINGTON, Individually  
and as Acting Chairman of the State Committee of  
the Liberal Party of the State of New York,

*Plaintiffs,*

v.

NELSON A. ROCKEFELLER, as Governor of the State of New  
York, LOUIS J. LEFKOWITZ, as Attorney General of the  
State of New York, JOHN P. LOMENZO, as Secretary  
of State of the State of New York; MALCOLM WILSON,  
as Lieutenant Governor of the State of New York, and  
Presiding Officer of the Senate of the State of New  
York, and ANTHONY J. TRAVIA, as Speaker and Pre-  
siding Officer of the Assembly of the State of New  
York,

*Defendants.*

No. 66—Civ.—1976.

United States District Court

S. D. New York.

March 20, 1968.

MOORE, Circuit Judge.

In its order (July 26, 1967), this court directed the  
Legislature of the State of New York "to enact into law a  
congressional districting plan, effective no later than March  
1, 1968, which districting plan shall be in conformity with  
the redistricting principles as set forth in the applicable  
decisions of the Supreme Court and/or such Congressional  
enactments as may be in force with respect thereto." In its  
opinion, 273 F. Supp. 984 (May 10, 1967) this court held  
that "[o]n the basis of population inequality alone, the  
Act [the 1961 Act] fails to meet constitutional standards."  
Elaborating upon this inequality, the court noted a popula-

*Appendix C*

tion in the former 12th district (Kings County) of 471,001 and in the adjoining former 15th district (also, Kings County), a population of 350,635—a difference in contiguous districts of 29.5% from the state average. Six pairs of adjacent districts had population differences of over 100,000. These figures, of necessity, were based on the 1960 census; there will be no other statewide census until 1970.

The Supreme Court has indicated that time is of the essence and that voters should not have to await such future legislative action as may be required after the 1970 figures shall have been announced. Accordingly, this court held that "[t]he 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present." Mindful of the practical difficulties attendant to an expeditious equalization of districts, the court, although reiterating a lack of any intention "to dictate to the Legislature the methods whereby substantial equality is to be attained" suggested that "[t]here are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities" and urged that "[e]ven if perfection cannot be achieved between now and 1973, improvement is worth the effort."

The Legislature reconvened in January 1968 and on February 26, 1968 repealed Article Seven relating to congressional districts (held to be unconstitutional) and enacted a new Article Seven establishing new congressional districts (S. 3980-A.5780). On that day, the new act became law as Chapter Eight of the Laws of 1968 upon signature by the Governor.

This court had retained jurisdiction of the action to enable the parties to apply for further relief. Pursuant to this provision, the plaintiffs submitted their objections to the new enactment. Various individuals sought leave to intervene to express their objections. Leave was granted to all and an opportunity was given for the presentation of

### Appendix C

their views on a hearing in open court held on March 12, 1968. Plaintiffs and the intervenors have also submitted briefs and affidavits. The Attorney General representing the defendants has also presented a brief and the "Interim Report of the Joint Legislative Committee on Reapportionment". In addition, Robert Brady (Special Counsel for the Committee) and Donald Zimmerman (Counsel for the Temporary President of the New York State Senate) made statements to the court in explanation of the rationale of the plan.

The intervenors, Frederick W. Richmond, a resident of the 14th district, Eugene Victor, a resident of the old 12th, now the new 15th district and Armand J. Starace, a resident of the Bay Ridge area, all complain of the way the district lines in Brooklyn have been drawn. They claim that the integrity of their communities and neighborhoods has been violated and that the new lines represent a bipartisan agreement to protect all incumbents. Victor charges that as a Reform Democrat, his candidacy for Congress has been impaired by so drawing the lines as to remove him from the Flatbush area (the 13th) to the new 15th. They also point to the divisive character of the lines as they affect Coney Island and Bay Ridge. All desire the adoption of plaintiff's proposed plan.

The intervenors Mary Leff and Kathryn Goldman are disgruntled with the new 21st and 23rd districts in the Bronx. Mary Leff is a member and an officer of an Independent Democratic Club in the 21st district which will become part of the 23rd and Kathryn Goldman is a member of a Reform Democratic Club and a County "committeeman" for her election district. She also wishes to have the lines of the 21st and 23rd districts redrawn in a manner proposed on a map submitted by these intervenors.

The intervenors Andrew Cooper, Paul S. Kerrigan and Joan C. Bacchus are primarily interested in the Brooklyn districts. John R. Pillion also intervened.

### Appendix C

The intervenors, Samuel I. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H. Fox object to the division of their community, Crown Heights, in Brooklyn between the new 10th and 12th districts and would have Atlantic Avenue as the dividing line instead of the line fixed by the Legislature.

The rationale of the plan as enacted is contained in the Interim Report of the Joint Committee on Reapportionment submitted to the Legislature to accompany S.3980; A.5780 dated February 22, 1968 (Interim Report). The report assertedly took cognizance of the various decisions of the Supreme Court with reference to redistricting from *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L. Ed.2d 481 (1964) to *Swann v. Adams*, 385 U.S. 440, 87 S.Ct. 569, 17 L.Ed.2d 501 (1967) and *Lucas v. Rhodes*, 389 U.S. 212, 88 S.Ct. 416, 19 L.Ed.2d 423 (December 4, 1967). The 1960 census figures were used. Because primary elections are to be held on June 18, 1968 and the first day to circulate petitions is April 2, 1968, the report recommended following "election district lines where at all possible, to reduce the work of the individual Boards of Elections to a minimum."<sup>1</sup>

Priority was given to population totals of the various districts. Other considerations were "the geographical conformation of the areas to be districted, the maintenance of county integrity, the facility by which the various Boards of Elections can 'tool up' for the forthcoming primary election, equality of population within the region, and equality of population throughout the state."<sup>2</sup>

The peculiar geographical contour of the State was taken into consideration. It "most naturally divides into regions."<sup>3</sup> The report concludes that "[p]opulation, interest, finances, a charter, custom and history—all tend to separate the City of New York from the rest of the state."<sup>4</sup>

1. Interim Report p. 9. Split election districts in the State total 16: Nassau, 4; Queens, 1; New York, 6; and Bronx, 5.

2. *Id.*, p. 10.

3. *Ibid.*

4. *Ibid.*



*Appendix C*

There has been no contention by any of the parties that the separability of New York City from the rest of the State is not logical and proper. Actually the 19 City districts average 409,109 persons per hypothetical district as against a State average for 41 districts of 409,326 (1960 census).

Long Island east of New York City contains only the counties of Nassau and Suffolk. To obtain equality of population per district for this area, five districts were necessary. Almost exact equality of population was obtained, the range being from 393,585 to 393,183. [Had four districts been drawn, the population of each would have been over 491,000, a disproportionately large figure. Any attempt to start at Montauk Point and to move west in units of 409,000 would have violated county, city, town and other historical traditions as well as requiring an invasion of New York City].

Queens and Kings, the western counties of Long Island, although a part of New York City are geographically separated from Manhattan and the Bronx by water. To preserve county integrity, as far as possible, Queens except for the 10th district was divided into four units with a population range of 434,770 to 434,552—and a part of Queens joined with a part of Kings in the 10th. [Five units would have resulted in too small a population per unit].

Kings (or Brooklyn) has five districts plus parts of Queens (the 10th), and because Richmond (Staten Island) is not sufficiently large for a full district, Kings has to contribute to it (the 16th). It is in this area that the greatest population disparities were found in the 1961 Act which this court held to be unconstitutional. Almost absolute equality has been attained for these seven districts, the range being from 417,040 to 417,478.

Moving across the river to Manhattan (New York County) and across another river to the first mainland of the State (Bronx County), this area has been combined into

## Appendix C

eight almost equal districts with only the 21st requiring a county division, the range being from 390,023 to 390,861.

Above the New York City line (upstate so-called), the pattern largely falls into county lines. Westchester, a large county, has been merged with adjacent Putnam, a very small county, to produce two districts of 420,146 and 420,467, respectively.

Continuing westward across New York State, except for the cities of Syracuse and Rochester, the population of the counties is comparatively small. Many counties are required to constitute one congressional district. Witness the 35th district which comprises eight counties for a population of 386,148. The report and the plan endeavor not to disturb the historic tradition of county joinder.

Upon reaching Buffalo, the problem of Erie (1,064,688) and adjoining Niagara (242,269), the Niagara Frontier—is presented. This population could not very well be shunted into the more easterly counties. The area could not be divided into four districts of only some 326,000 each. Therefore, the plan provided three districts of 435,393 to 435,880 which the court finds satisfactory.

When the plan is analyzed, the population disparities—such as they are—are not to be found within the various regions where mathematical equality has virtually been achieved. The differences are largely between the regions themselves, New York and the Bronx on the east, Buffalo on the west. Furthermore, these differences do not form the real basis of the objections.

[13] Applying the formulae of permutations and combinations, a myriad of theoretical districts could be evolved. Thus, plaintiffs urge their plan as somewhat more equal in population. Undoubtedly, others could improve on plaintiffs' plan. But under the law, the task of fixing congressional districts must be borne by the Legislature. The task of the court is to determine whether the plan offends constitutional standards. The asserted grievances of these objectants relate primarily to the manner in which the lines

## Appendix C

have been drawn in the counties and communities in which they live and where they have their political aspirations and participation. These, they imply, have been seriously interfered with by the realignment. They argue that unnatural divisions of neighborhoods result. However, wherever there is a line, there will be those who live on one side and those who live on the other. Were the lines to be drawn differently, this situation would still obtain. There would be those aggrieved by any change.

The gross population disparities, which were the source of plaintiffs' original complaint and which brought about a declaration of unconstitutionality, have been remedied so that equality is to be found in regions logically selected for the various congressional districts. The Legislature cannot be expected to satisfy, by its redistricting action, the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side. The twenty or more identifiable communities of Brooklyn may well have preserved their own traditions from the days of the Dutch, although in today's rapidly changing world, this is doubtful. But even Brooklyn's large population will not support twenty community congressmen. Of necessity, there must be lines which divide.

Since no proof has been submitted that the Legislature acted in contravention of the precepts of the Supreme Court with respect to congressional reapportionment, the objections of plaintiffs and objectants are overruled. The Legislature is now constitutionally constituted. In theory at least, the people of the State are being represented by senators and assemblymen of their choice. No matter how lines are drawn, some candidate of some party will always win, be his margin of victory ever so small. Under such circumstances, losing parties and candidates can always point to probable victories had the lines been drawn differently. Our constitutional system calls for rendering unto the Legislature the things that are the Legislature's. Re-

## Appendix C

apportionment is one of such things. Were each political party, and factions within each party, permitted to by-pass the Legislature by asking the courts to foist upon the electorate districts of their own draftsmanship and choosing representative government would no longer exist. Self-interest would be substituted for majority rule. The courts cannot become pawns in such a political chess game. Here, for example, the plaintiffs apparently represent the State Committee of the Liberal Party and some of the intervenors appear to be associated with reform or independent groups within the Democratic Party. Courts should not enter the political arena at the behest of any party or group. The legislative body may be composed of the representatives of many parties and factions but primarily, as a result of their election, they are the representatives of the people. The task of reapportionment is for the Legislature. Its task here under all the facts and circumstances cannot be said to have been unconstitutionally performed.

The plan, at least until the next census, will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts.

Settle judgment on notice.



**APPENDIX D**

**JUDGMENT**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK**

**66-C-1976**

**DAVID I. WELLS and DONALD S. HARRINGTON, individually  
and as Acting Chairman of the State Committee of the  
Liberal Party of the State of New York,**

***Plaintiffs,***

***—against—***

**NELSON A. ROCKEFELLER, as Governor of the State of New  
York, LOUIS J. LEFKOWITZ, as Attorney General of the  
State of New York, JOHN P. LOMENZO, as Secretary of  
State of the State of New York, MALCOLM WILSON, as  
Lieutenant Governor of the State of New York, and  
Presiding Officer of the Senate of the State of New  
York, and ANTHONY J. TRAVIA, as Speaker and Pre-  
siding Officer of the Assembly of the State of New  
York,**

***Defendants.***

A hearing having been held in open court on March 12, 1968 to hear challenges to the constitutionality of Chapter 8 of the New York Laws of 1968 and applications for intervention by Frederick W. Richmond, Eugene Victor, Armand J. Starace, Mary Leff, Kathryn Goldman, Andrew Cooper, Paul S. Kerrigan, Joan C. Bacchus, John R. Pillion, Samuel J. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz, and Rabbi S. H. Fox;

Now, upon the filing of Chapter 8 of the Laws of 1968 of the State of New York and the Interim Report of the Joint Legislative Committee on Reapportionment, and all papers submitted with respect to said hearing and all papers and proceedings heretofore had herein, and after hearing Isidore Levine, Esq., for plaintiffs; and George D. Zucker-

## Appendix D

man, Assistant Attorney General, Robert Brady, Special Counsel for the Joint Legislative Committee on Reapportionment, and Donald Zimmerman, Consultant for the Temporary President of the New York State Senate, on behalf of the defendants and in support of the constitutionality of Chapter 8 of the Laws of 1968; and Ambrose Doskow, Esq., for intervenors F. W. Richmond, E. Victor and A. J. Starace; Edward J. Ennis, Esq., for intervenors Mary Leff and Kathryn Goldman; Milton H. Friedman, Esq., for intervenors Andrew Cooper, Paul S. Kerrigan and Joan C. Bacchus; John R. Pillion, Esq. pro se; and after reading the papers submitted by Gerald P. Halpern, Esq., for intervenors Samuel J. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H. Fox; and after filing the opinion of this Court dated March 20, 1968, it is

**ORDERED, ADJUDGED AND DECREED**, that the objections to Chapter 8 of the New York Laws of 1968 raised by plaintiffs and by the above intervenors are denied in all respects, and it is further

**ORDERED, ADJUDGED AND DECREED**, that Chapter 8 of the Laws of 1968 of the State of New York, effective February 26, 1968, is in compliance with the order of this Court, dated July 26, 1967, and that the congressional districting plan set forth in said statute is in conformity with the requirements of the Constitution of the United States.

Dated: New York, N. Y.

March 29, 1968.

(s) **LEONARD P. MOORE**

**U.S.C.J.**

(s) **LLOYD F. MACMAHON**

**U.S.D.J.**

(s) **JOHN M. CANNELLA**

**U.S.D.J.**

**Judgment entered 4-1-68**

**JOHN J. OLIVAR, JR.**

**Clark**

## APPENDIX E

## STATE OF NEW YORK

S. 3980

A. 5780

## SENATE — ASSEMBLY

FEBRUARY 20, 1968

IN SENATE—Introduced by COMMITTEE ON RULES—  
 (at the request of Messrs. HUGHES and FERRALL)—  
 read twice and ordered printed, and when printed to be  
 committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES  
 —(at the request of Messrs. DeSALVIO and TERRY)—  
 read once and referred to the Committee on Rules

## AN ACT

To repeal article seven of the state law, relating to the  
 division of the state into congressional districts, and to  
 insert a new article seven in such law, relating thereto

*The People of the State of New York, represented in  
 Senate and Assembly, do enact as follows:*

Section 1. Article seven of the state law is hereby  
 repealed and a new article seven inserted in lieu thereof,  
 to read as follows:

## ARTICLE SEVEN

## CONGRESSIONAL DISTRICTS

Section 110. Present congressional districts.

111. New congressional districts.

112. Definitions.

§ 110. Present congressional districts. The congressional districts of this state, as existing immediately before the time this article takes effect, shall continue to be the congressional districts of the state until the expiration of the terms of the representatives in congress then in office,

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except for the purpose of an election of representatives in congress for full terms beginning at such expirations.

§ 111. New congressional districts. Except as provided in section one hundred ten, the congressional districts of this state from and after the time this article takes effect, shall consist as follows: (Figures in parenthesis represent population according to the 1960 Federal Decennial Census.)

First Congressional district. That part of the county of Suffolk described as follows: The towns of East Hampton, Southold, Southampton, Riverhead, Brookhaven, Smithtown and Islip; except, that part of the town of Islip beginning at a point where Sunrise highway intersects the town line of Islip and Babylon, then along Sunrise highway to Higbie lane, to Montauk highway (South Country road), to Robert Moses causeway, then southerly on Robert Moses causeway to the waters of the Great South bay, then westerly through the waters of the Great South bay and Great Cove to the dividing line of the towns of Islip and Babylon, then northerly along said dividing line to the point of beginning; the Shinnecock Indian reservation and the islands of Shelter island, Gardiner's island, Fisher's island and all islands within the above mentioned townships. (393,585)

Second Congressional district. That part of the county of Suffolk described as follows: The towns of Huntington, Babylon and that part of the Town of Islip beginning at a point where Sunrise highway intersects the town line of Islip and Babylon, then along Sunrise highway to Higbie lane, to Montauk highway (South Country road), to Robert Moses causeway, then southerly on Robert Moses causeway to the waters of the Great South bay, then westerly through the waters of the Great South bay and Great Cove to the dividing line of the towns of Islip and Babylon, then northerly along said dividing line to the point of beginning; and



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That part of the county of Nassau in the towns of Oyster Bay and Hempstead described as follows: Beginning at the intersection of the Suffolk-Nassau county line and the waters of Cold Spring Harbor, then along the Suffolk-Nassau county line to Northern State parkway, to Wantagh-Oyster Bay expressway, to Phipps lane, to Wallace drive, to Southern parkway, to Wantagh-Oyster Bay expressway, to Old Country road, to Grohman's lane, to Lincoln Road North, to Lincoln Gate, to Old Country road, to Barnum avenue, to Stone road, to Belmont avenue, then along Belmont avenue to its intersection with Stewart street and Eileen avenue, then along Eileen avenue to Floral avenue, to Lex avenue, to Deb street, to MacArthur avenue, to Gates avenue, to Locust avenue, to Pine avenue, to Floral avenue, to Farmers avenue, then along Farmers avenue to its intersection with Allan Gate and Manor drive, then along Manor drive to Silbert avenue, to Cherry avenue, to Stewart avenue, then along Stewart avenue to its intersection with the tracks of the main line of the Long Island Railroad, then along said tracks to its intersection with Bathpage State parkway, then along Bethpage State parkway, to Southern State parkway, to North Broadway, to North Hickory street, to Summit drive, to North Chestnut street, then along North Chestnut street and North Chestnut street extended through Massapequa Park to the west village line of the village of Massapequa Park, then along said village line to Jerusalem avenue, then along Jerusalem avenue to its intersection with the Hempstead-Oyster Bay town line, then along said town line to Merrick road, then along Merrick road to its intersection with Bellmore canal extended to Merrick road, then along Bellmore canal extended and Bellmore creek to Kopf road extended, then along Kopf road extended and Kopf road to Bellmore avenue, to South St. Marks avenue, then westerly along South St. Marks avenue to Boundary lane, to Gace court, to Island plaza, then along Island plaza

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and Island plaza extended into the waters of Newbridge creek, then through said waters to its intersection with Philip court extended, then along Philip court extended and Philip court, to Walters court, to Hewlett lane, then along Hewlett lane and Hewlett lane extended into Grand View canal, then through the waters of Grand View canal, Baldwin creek, East bay, Horserace channel and Sloop channel to its intersection with the Oyster Bay-Hempstead town line then easterly through said waters to the Nassau-Suffolk line, then along said line to the point of beginning.

(Suffolk Part 273,199; Nassau Part 120,266—393,465)

Third Congressional district. In the county of Nassau described as follows: The town of North Hempstead and that part of the town of Oyster Bay beginning at the intersection of the Suffolk-Nassau county line and the waters of Cold Spring harbor, then along the Suffolk-Nassau county line to Northern State parkway, to Wantagh-Oyster Bay expressway, to Phipps lane, to Wallace drive, to Southern parkway, to Wantagh-Oyster Bay expressway, to Old Country road, to Grohman's lane, to Lincoln Road North, to Lincoln Gate, to Old Country road, to Barnum avenue, to Stone road, to Belmont avenue, then along Belmont avenue to its intersection with Stewart street and Eileen avenue, then along Eileen avenue to Floral avenue, to Lex avenue, to Deb street, to MacArthur avenue, to Gates avenue, to Locust avenue, to Pine avenue, to Floral avenue, to Farmers avenue, then along Farmers avenue to its intersection with Allan Gate and Manor drive, then along Manor drive to Silbert avenue, to Cherry avenue, to Stewart avenue then along Stewart avenue to its intersection with the tracks of the main line of the Long Island railroad, then along said tracks to its intersection with Bethpage State parkway, to Hempstead turnpike, then along Hempstead turnpike to its intersection with the Oyster Bay-Hempstead town line, then northerly and west-

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erly along said town line and the Oyster Bay-North Hempstead town line to the waters of Hempstead harbor, then through said waters and the waters of Long Island sound and Cold Spring harbor to the point of beginning.

(393,434)

Fourth Congressional district. That part of the county of Nassau described as follows: That part of the towns of Hempstead and Oyster bay beginning at the intersection of the Nassau-Queens county line with the northerly village line of the village of Valley Stream, then easterly along said village line to its intersection with the westerly village line of the village of Malverne, then northerly and easterly along said village line to its intersection with Southern State parkway, then easterly along Southern State parkway to Jerusalem avenue, to the intersection of Jerusalem avenue with the westerly village line of the village of Massapequa park, then northerly along said village line to its intersection with North Chestnut street extended across Massapequa State park, then along North Chestnut street extended and North Chestnut street to Summit drive, to North Hickory street, to North Broadway, to Southern State parkway, to Bethpage State parkway, to Hempstead turnpike, then along Hempstead turnpike to its intersection with the Hempstead-Oyster Bay town lines, then northerly, westerly and southerly along the Hempstead-Oyster Bay town line, the Hempstead-North Hempstead town line and the Nassau-Queens county line to the point of beginning.

(393,183)

Fifth Congressional district. That part of the county of Nassau described as follows: That part of the towns of Oyster Bay and Hempstead beginning at the intersection of the Nassau-Queens county line with the northerly village line of the village of Valley Stream, then easterly along said village line to its intersection with the westerly village line of the village of Malverne, then northerly and easterly along said village line to its intersection with Southern

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State parkway, then easterly along Southern State parkway to Jerusalem avenue, to the intersection of Jerusalem avenue with the Oyster Bay-Hempstead town line, then southerly along said town line to its intersection with Merrick road, then along Merrick road to its intersection with Bellmore canal extended to Merrick road, then along Bellmore canal extended and Bellmore creek to Kopf road extended, then along Kopf road extended and Kopf road to Bellmore avenue, to South St. Marks avenue, then westerly along South St. Marks avenue to Boundary lane, to Gace court, to Island plaza, then along Island plaza and Island plaza extended into the waters of Newbridge creek, then through said waters to its intersection with Philip court extended, then along Philip court extended and Philip court, to Walters court, to Hewlett lane, then along Hewlett lane and Hewlett lane extended into Grand View canal, then through the waters of Grand View canal, Baldwin creek, East bay, Horserace channel and Sloop channel to its intersection with the Oyster Bay-Hempstead town line then southerly along said line to its intersection with the waters of the Atlantic ocean, then westerly through said waters to the Nassau-Queens line, then along said line to the point of beginning. (393,288)

Sixth Congressional district. That part of the county of Queens described as follows: Beginning at a point where One Hundred Thirty Sixth avenue intersects the county line between Queens county and Nassau county, then along One Hundred Thirty Sixth avenue to Brookville boulevard, to One Hundred Thirty Fifth avenue, to Laurelton parkway, to One Hundred Thirty Third avenue, to Two Hundred Thirtieth street, to Merrick boulevard, to Two Hundred Eighteenth street, to One Hundred Thirty Third road, to Springfield boulevard, to Murdock avenue, to Colfax street, to Hollis avenue, to Jamaica avenue, to Merrick boulevard, to Archer avenue, to Van Wyck expressway, to Atlantic avenue, to One Hundred Twenty Seventh street,



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to Atlantic avenue, to Woodhaven boulevard, to Park Lane south, to Ninety Eighth street, to Woodhaven boulevard, to Myrtle avenue, to Eightieth street, to Metropolitan avenue, to Sixty Ninth avenue, to Burns street, to Union turnpike, to Queens boulevard, to Main street, to Eighty Fifth drive, to One Hundred Forty Fourth street, to Eighty Fifth avenue, to One Hundred Forty Eighth street, to Eighty Fourth drive, to Smedley street, to Grand Central parkway, to One Hundred Sixty Fourth street, to Union turnpike, along Union turnpike, to Hollis Court boulevard, to Richland avenue, to Peck avenue, to Bell boulevard, to Kingsbury avenue, to Springfield boulevard, to Sixty Ninth avenue, to Cloverdale boulevard, to Long Island expressway, along Long Island expressway to Peck avenue, to Fresh Meadow lane, to North Hempstead turnpike, to Main street, to Long Island expressway, to Rodman street, along Rodman street to Booth Memorial avenue and One Hundred Thirty Third street, along One Hundred Thirty Third street to Elder avenue, to Peck avenue, to Main street, to Elder avenue, to Kissena boulevard, to Forty Fifth avenue, to Parsons boulevard, to Bayside avenue, along Bayside avenue, to Bayside lane, to Francis Lewis boulevard, to Twenty Fourth road, to Utopia parkway, to Twenty Fourth avenue, to Two Hundred First street, to Twenty Third avenue, to Two Hundred Seventh street, to Twenty Sixth avenue, to Bell boulevard, to Twenty Fourth avenue, along Twenty Fourth avenue and Twenty Fourth avenue extended to and through the waters of Little Neck bay to the Queens-Nassau county line, then along said county line to the place of beginning. (434,615).

Seventh Congressional district. That part of the county of Queens described as follows: Beginning at a point where One Hundred Thirty Sixth avenue intersects the county line between Queens county and Nassau county, then along One Hundred Thirty Sixth avenue to Brookville boulevard, to One Hundred Thirty Fifth avenue, to Laurel-

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ton parkway, to One Hundred Thirty Third avenue, to Two Hundred Thirtieth street, to Merrick boulevard, to Two Hundred Eighteenth street, to One Hundred Thirty Third road, to Springfield boulevard, to Murdock avenue, to Colfax street, to Hollis avenue, to Jamaica avenue, to Merrick boulevard, to Archer avenue, to Van Wyck expressway, to Atlantic avenue, to One Hundred Twenty Seventh street, to Atlantic avenue, to Woodhaven boulevard, to Park Lane south, to Ninety Eighth street, to Woodhaven boulevard, to Myrtle avenue, to Eightieth street, to Cooper avenue, to Sixty Ninth avenue, to Seventy Eighth street, to Metropolitan avenue, to Seventy Fourth street, to Juniper boulevard south, to Seventh First street, to Lutheran avenue, to the intersection of Eliot avenue, Lutheran avenue and Seventy Fifth street, along Seventy Fifth street, to Caldwell avenue, to Seventy First street, to Long Island expressway, to Grand avenue, along Grand avenue, to Sixty Fourth street, to Fifty Ninth drive, to Sixtieth avenue, to Fresh Pond road, to Eliot avenue, to Metropolitan avenue, along Metropolitan avenue to the dividing line between Queens county and Kings county, along said dividing line to the waters of Jamaica bay, through the waters of Jamaica bay, Grassy bay and Head of Bay inlet to the Queens-Nassau county line, then along said dividing line to the place of beginning. (434,750)

22 Eighth Congressional district. That part of the county of Queens described as follows: Beginning at a point where Twenty Third avenue extended intersects the waters of Flushing bay, then along Twenty Third avenue extended and Twenty Third avenue to Grand Central parkway, to Ninety Fourth street, to Thirtieth avenue, to Ninety Third street, to Northern boulevard, to Junction boulevard, to Fifty Seventh avenue, to Ninety Ninth street, to Sixty Third road, to the intersection of Junction boulevard, Sixty Third road, Sixty Third drive and Queens boulevard, along

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Queens boulevard to Fifty First avenue, to Sixty Ninth street, to the intersection of Grand avenue, Sixty Ninth street, and Long Island expressway, along Long Island expressway to Seventy First street, to Caldwell avenue, to Seventy Fifth street, to the intersection of Eliot avenue, Seventy Fifth street and Lutheran avenue, along Lutheran avenue, to Seventy First street, to Juniper boulevard south, to Seventy Fourth street, to Metropolitan avenue, to Seventy Eighth street, to Sixty Ninth avenue, to Eightieth street, to Metropolitan avenue, to Sixty Ninth avenue, to Burns street, to Union turnpike, to Queens boulevard, to Main street, to Eighty fifth drive, to One Hundred Forty Fourth street, to Eighty Fifth avenue, to One Hundred Forty Eighth street, to Eighty Fourth drive, to Smedley street, to Grand Central parkway, to One Hundred Sixty Fourth street, to Union turnpike, along Union turnpike to Hollis Court boulevard, to Richmond avenue, to Peck avenue, to Bell boulevard, to Kingsbury avenue, to Springfield boulevard, to Sixty Ninth avenue, to Cloverdale boulevard, to Long Island expressway, along Long Island expressway to Peck avenue, to Fresh Meadow lane, to North Hempstead turnpike, to Main street, to Long Island expressway, to Rodman street, along Rodman street to the intersection of Booth Memorial avenue and One Hundred Thirty Third street, along One Hundred Thirty Third street to Elder avenue, to Peck avenue, to Main street, to Elder avenue, to Kissena boulevard, to Forty Fifth avenue, to Parsons boulevard, to Bayside avenue, along Bayside avenue to Bayside lane, to Francis Lewis boulevard, to Twenty Fourth road, to Utopia parkway, to Twenty Fourth avenue, to Two Hundred First street, to Twenty Third avenue, to Two Hundred Seventh street, to Twenty Sixth avenue, to Bell boulevard, to Twenty Fourth avenue, along Twenty Fourth avenue and Twenty Fourth avenue extended to and through the waters of Little Neck bay to the Queens-Nassau county line, then northerly through the waters of Little Neck bay, East river and Flushing bay to the place of beginning.

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**Ninth Congressional district.** That part of the county of Queens described as follows: Beginning at a point where Twenty Third avenue extended intersects the waters of Flushing bay, then southwesterly along Twenty Third avenue extended and Twenty Third avenue, to Grand Central parkway, to Ninety Fourth street, to Thirtieth avenue, to Ninety Third street, to Northern boulevard, to Junction boulevard, to Fifty Seventh Avenue, to Ninety Ninth street, to Sixty Third road, to the intersection of Junction boulevard, Sixty Third road, Sixty Third drive and Queens boulevard, along Queens boulevard to Fifty First avenue, to Sixty Ninth street, to the intersection of Long Island expressway, Sixty Ninth street and Grand avenue, along Grand avenue, to Sixty Fourth street, to Fifty Ninth drive, to Sixtieth avenue, to Fresh Pond road, to Eliot avenue, to Metropolitan avenue, along Metropolitan avenue to the Queens-Kings county line, then northerly along said line to Newton creek, to East river, to East channel, to Hell Gate, to Riker's island channel, to East river and Flushing bay to the place of beginning. (434,770)

**Tenth Congressional district.** That part of the county of Queens described as follows: Beginning at a point where the Queens-Kings county line is intersected by Rockaway inlet, then easterly and northerly along said line to a point where said line is intersected by the waters of Jamaica bay and Grassy bay, then easterly through the waters of Jamaica bay, Grassy bay and Mott basin to the dividing line between the county of Queens and the county of Nassau, then easterly and southerly along said dividing line to the waters of the Atlantic ocean, then westerly through the waters of the Atlantic ocean and Rockaway inlet to the place of beginning; and That part of the county of Kings described as follows: Beginning at a point where the Queens-Kings county line meets the United States pierhead and bulkhead line, then westerly and southerly along such bulkhead line to the waters of Paerdegat basin, then

to the place of beginning. (434,770)



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through the waters of Paerdegat basin to a point where Seaview avenue extended meets the waters of Paerdegat basin, the along Seaview avenue extended and Seaview avenue to East Eightieth street, to Avenue "N", to East Eighty Fourth street, to Avenue "L", to East Eighty Third street, to Avenue "K", to East Eighty Sixth street, to Avenue "L", to Bensen avenue, to Avenue "K", to East Ninety First street, to Flatlands avenue, to East Ninety Third street, to Farragut road, to East Ninety Sixth street, to Foster avenue, to Rockaway parkway, to Ditmas avenue, to East Ninety Eighth street, to the intersection of East Ninety Eighth street and Hopkinson avenue, then along Hopkinson avenue to Hegeman avenue, to East Ninety Eighth street, to Rutland road, to East Ninety Sixth street, to East New York avenue, to the intersection of East New York avenue, Empire boulevard and Utica avenue, then along Utica avenue to Montgomery street, to Schenectady avenue, to the intersection of Schenectady avenue, Empire boulevard and Lefferts avenue, then along Lefferts avenue to Troy avenue, to Montgomery street, to Nostrand avenue, to Empire boulevard, to the intersection of Empire boulevard, Flatbush avenue and Ocean avenue, then along Ocean avenue to Church avenue, to East Twenty First street, to Albemarle road, to Flatbush avenue, to the intersection of Flatbush avenue, Avenue "D" and Ditmas avenue, then along Ditmas avenue to East Twenty Second street, to Foster avenue, to Ocean avenue, to Avenue "I", to East Twenty Third street, to Avenue "L", to East Twenty Seventh street, to Avenue "M", to Bedford avenue, to Avenue "P", to East Twenty Third street, to Quentin road, to Nostrand avenue, to the intersection of Nostrand avenue and Gerritsen avenue, then along Gerritsen avenue to Fillmore avenue, to Stuart street, to Avenue "U", to Gerritsen avenue, to Whitney avenue, to Burnett street, to Avenue "X", to Gerritsen avenue and Gerritsen avenue extended

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to the Queens-Kings county line, then easterly and northerly along such county line to the point of beginning.

(Queens Part 70,891; Kings 346-231—417,122)

**Eleventh Congressional district.** That part of the county of Kings described as follows: Beginning at a point where the Queens-Kings county line meets the United States pierhead and bulkhead line, then westerly and southerly along such bulkhead line to the waters of Paerdegat basin, then through the waters of Paerdegat basin to a point where Seaview avenue extended meets the waters of Paerdegat basin, then along Seaview avenue extended and Seaview avenue to East Eightieth street, to Avenue "N", to East Eighty Fourth street, to Avenue "L", to East Eighty Third street, to Avenue "K", to East Eighty Sixth street, to Avenue "L", to Remsen avenue, to Avenue "K", to East Ninety First street, to Flatlands avenue, to East Ninety Third street, to Farragut road, to East Ninety Sixth street, to Foster avenue, to Rockaway parkway, to Ditmas avenue, to East Ninety Eighth street, to the intersection of East Ninety Eighth street and Hopkinson avenue, then along Hopkinson avenue to Hegeman avenue, to East Ninety Eighth street, to Rutland road, to East Ninety Sixth street, to East New York avenue, to Ralph avenue, to Marion street, to Howard avenue, to Chauncey street, to Ralph avenue, to Macon street, to Howard avenue, to Broadway, to Grove street, to Bushwick avenue, to Linden street, to Evergreen avenue, to Menahan street, to Wilson avenue, to Linden street, to Knickerbocker avenue, to Palmetto street, to Irving avenue, to Bleecker street, to the Queens-Kings county line, then southerly easterly and southerly along said county line to the point of beginning.

(417,090)

**Twelfth Congressional district.** That part of the county of Kings described as follows: Beginning at a point where Meeker avenue meets the Kings-Queens county line, then along Meeker avenue to Manhattan avenue, to Grand street,

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to Leonard street, to Meserole street, to Graham avenue, to Johnson avenue, to Manhattan avenue, to Boerum street, to Leonard street, to Broadway to the intersection of Broadway and Throop avenue, then along Throop avenue to Gerry street, to Harrison avenue, to Flushing avenue, to the intersection of Flushing avenue, Union avenue and Marcy avenue, then along Marcy avenue to Park avenue, to Spencer street, to Myrtle avenue, to Bedford avenue, to Monroe street, to Franklin avenue, to Putnam avenue, to Clason avenue, to Lefferts place, to Franklin avenue, to the intersection of Franklin avenue, Washington avenue and Empire boulevard, then along Empire boulevard to Nostrand avenue, to Montgomery street, to Troy avenue, to Lefferts avenue, to the intersection of Lefferts avenue, Empire boulevard and Schenectady avenue, then along Schenectady avenue to Montgomery street, to Utica avenue, to the intersection of Utica avenue, Empire boulevard and East New York avenue, then along East New York avenue to Ralph avenue, to Marion street, to Howard avenue, to Chauncey street, to Ralph avenue, to Macon street, to Howard avenue, to Broadway, to Grove street, to Bushwick avenue, to Linden street, to Evergreen avenue, to Menahan street, to Wilson avenue, to Linden street, to Knickerbocker avenue, to Palmetto street, to Irving avenue, to Bleecker street, to the Queens-Kings county line, then northerly and westerly along such line to the point of beginning.

(417,298)

Thirteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where West Eighth street extended meets the waters of the Atlantic ocean, then West Eighth street extended and West Eighth street to Surf avenue, to West Fifth street, to Shore parkway, to Ocean parkway, to Avenue "X", to McDonald avenue, to Avenue "U", to West Ninth street, to Avenue "T", to West Twelfth street, to Avenue "S", to Stillwell avenue, to the intersection of Stillwell avenue, Quentin

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road, Seventy Eighth street and Twenty Third avenue, then along Twenty Third avenue to Seventy Ninth street, to Bay parkway, to Seventy Third street, to Twenty First avenue, to Seventy Second street, to Nineteenth avenue, to Sixty Eighth street, to Eighteenth avenue, to Sixty Fifth street, to Seventeenth avenue, to Sixty Fourth street, to Sixteenth avenue, to Dahill road, to Church avenue, to East Fifth street, to Beverley road, to Ocean parkway, to Church avenue, to Coney Island avenue, to Caton avenue, to Westminster road, to Church avenue, to East Eighteenth street, to Tennis court, to Ocean avenue, to Church avenue, to East Twenty First street, to Albemarle road, to Flatbush avenue, to the intersection of Flatbush avenue, Avenue "D", and Ditmas avenue, then along Ditmas avenue to East Twenty Second street, to Foster avenue, to Ocean avenue, to Avenue "I", to East Twenty Third street, to Avenue "L", to East Twenty Seventh street, to Avenue "M", to Bedford avenue, to Avenue "P", to East Twenty Third street, to Quentin road, to Nostrand avenue, to the intersection of Nostrand avenue and Gerritsen avenue, then along Gerritsen avenue to Fillmore avenue, to Stuart street, to Avenue "U", to Gerritsen avenue, to Whitney avenue, to Burnett street, to Avenue "X", to Gerritsen avenue and Gerritsen avenue extended to the Queens-Kings county line and then westerly through the waters of Rockaway inlet and the Atlantic ocean to the point of beginning.

(417,040)

Fourteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where Meeker avenue meets the Kings-Queens county line, then along Meeker avenue to Manhattan avenue, to Grand street, to Leonard street, to Meserole street, to Graham avenue, to Johnson avenue, to Manhattan avenue, to Boerum street, to Leonard street, to Broadway, to the intersection of Broadway and Throop avenue, then along Throop avenue to Gerry street, to Harrison avenue, to Flushing



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avenue, to the intersection of Flushing avenue, Union avenue and Marcy avenue, then along Marcy avenue to Park avenue, to Spencer street, to Myrtle avenue, to Bedford avenue, to Monroe street, to Franklin avenue, to Lexington avenue, to Classon avenue, to Greene avenue, to Carlton avenue, to Fulton street, to Adelphi street, to Atlantic avenue, to Flatbush avenue, to Sixth avenue, to Prospect place, to Fifth avenue, to St. Marks place, to Fourth avenue, to Union street, to Fifth avenue, to First street, to Sixth avenue, to Ninth street, to Fourth avenue, to Prospect avenue, to Fifth avenue, to Twenty Fourth street, to Fourth avenue, to Fifty First street, to Third avenue, to Fifty Sixth street, to Fourth avenue, to Sixtieth street, to Third avenue, to Eighty First street, to Ridge boulevard, to Eighty Third street, to Colonial road, to Seventy Eighth street, to Narrows avenue, to Seventy Seventh street and Seventy Seventh street extended to the waters of the Narrows, then through the waters of the Narrows, Upper bay, Buttermilk channel, and the East river to a point where said river meets the Kings-Queens county line, then easterly along said county line as it winds and turns to the point of beginning. (417,080)

Fifteenth Congressional district. That part of the county of Kings described as follows: Beginning at a point where Third avenue extended intersects the waters of the Narrows, then along Third avenue extended and Third avenue to Ninety Fifth street, to Fort Hamilton parkway, to Eighty Fourth street, to Seventh avenue, to Eighty Sixth street, to Twelfth avenue, to Eightieth street, to Thirteenth avenue, to Seventy Third street, to Fourteenth avenue, to Sixty Third street, to Sixteenth avenue, to Dahill road, to Church avenue, to East Fifth street, to Beverly road, to Ocean parkway, to Church avenue, to Coney Island avenue, to Caton avenue, to Westminster road, to Church avenue, to East Eighteenth street, to Tennis court, to Ocean avenue, to the intersection of Ocean avenue, Flatbush ave-

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nue and Empire boulevard, then along Empire boulevard to the intersection of Empire boulevard, Washington avenue and Franklin avenue, then along Franklin avenue to Lefferts place, to Classon avenue, to Putnam avenue, to Franklin avenue, to Lexington avenue, to Classon avenue, to Greene avenue, to Carlton avenue, to Fulton street, to Adelphi street, to Atlantic avenue, to Flatbush avenue, to Sixth avenue, to Prospect place, to Fifth avenue, to St. Marks place, to Fourth avenue, to Union street, to Fifth avenue, to First street, to Sixth avenue, to Ninth street, to Fourth avenue, to Prospect avenue, to Fifth avenue, to Twenty Fourth street, to Fourth avenue, to Fifty First street, to Third avenue, to Fifty Sixth street, to Fourth avenue, to Sixtieth street, to Third avenue, to Eighty First street, to Ridge boulevard, to Eighty Third street, to Colonial road, to Seventy eighth street, to Narrows avenue, to Seventy Seventh street and Seventy Seventh street extended to the waters of the Narrows, then southerly through said waters to the point of beginning. (417,093)

Sixteenth Congressional district. The county of Richmond; and That part of the county of Kings described as follows: Beginning at a point where Third avenue extended intersects the waters of the Narrows, then along Third Avenue extended and Third avenue to Ninety Fifth street, to Fort Hamilton parkway, to Eighty Fourth street, to Seventh avenue, to Eighty Sixth street, to Twelfth avenue, to Eightieth street, to Thirteenth avenue, to Seventy Third street, to Fourteenth avenue, to Sixty Third street, to Sixteenth avenue, to Sixty Fourth street, to Seventeenth avenue, to Sixty Fifth street, to Eighteenth avenue, to Sixty Eighth street, to Nineteenth avenue, to Seventy Second street, to Twenty First avenue, to Seventy Third street, to Bay parkway, to Seventy Ninth street, to Twenty Third avenue, to the intersection of Twenty Third avenue, Seventy Eighth street, Quentin road and Stillwell avenue, then along Stillwell avenue to Avenue "S", to West Twelfth street, to Ave-

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nue "T", to West Ninth street, to Avenue "U", to McDonald avenue, to Avenue "X", to Ocean parkway, to Shore parkway, to West Fifth street, to Surf avenue, to West Eighth street and West Eighth street extended into the waters of the Atlantic ocean, then westerly and northerly through the waters of the Atlantic ocean, Lower bay, Gravesend bay and the Narrows to the point of beginning.

(Richmond 221,991; Kings Part 195,487—417,478)

Seventeenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the East river and East Fourteenth street extended, then westerly along East Fourteenth street extended and East Fourteenth street to First avenue, to East Nineteenth street, to Third avenue, to the Bowery, to Great Jones street, to West Third street, to Avenue of the Americas, to West Fourth street, to Christopher street, to Bleecker street, to Abington square, to Eighth avenue, to West Fourteenth street, to Seventh avenue, to West Thirty Fourth street, to Eighth Avenue, to West Fifty Fourth street, to Ninth avenue, to Columbus avenue, to West Seventy Third street, to Central Park West, to West One Hundred Tenth street, to Frawley Circle, to Fifth Avenue, to East Ninety Eighth street, to Madison Avenue, to East Ninety Seventh street, to Park avenue, to East Ninety Sixth street, to Lexington avenue, to East Ninety Fourth street, to Third avenue, to East Ninety Second street, to Second avenue, to East Ninety First street, to York avenue, and York avenue extended into the waters of the East river and southerly through said waters to the place of beginning, including Welfare island and Belmont island. (390,742)

Eighteenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the Harlem river and Seventh avenue extended, then along Seventh avenue extended and Seventh avenue to West One Hundred Forty

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Fifth street, to Eighth avenue, to West One Hundred Forty Seventh street, to Bradhurst avenue, to West One Hundred Fiftieth street, then westerly along West One Hundred Fiftieth street extended and West One Hundred Fiftieth street through Colonial park, to St. Nicholas avenue to West One Hundred Forty Fifth street, to Amsterdam avenue, to Morningside drive, to Cathedral parkway, then along Cathedral parkway and West One Hundred Tenth street, to Frawley Circle, to Fifth avenue, to East Ninety Eighth street, to Madison avenue, to East Ninety Seventh street, to Park avenue, to East Ninety Sixth street, to Lexington avenue, to East Ninety Fourth street, to Third avenue, to East Ninety Second street, to Second avenue, to East Ninety First street, to York avenue and York avenue extended into the waters of the East river and through said waters and those of the Harlem river to the place of beginning, including Randalls island and Ward's island.

(390,861)

Nineteenth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the East river and East Fourteenth street extended, then westerly along East Fourteenth street extended and East Fourteenth street, to First avenue, to East Nineteenth street, to Third avenue, to the Bowery, to Great Jones street, to West Third street, to Avenue of the Americas, to West Fourth street, to Christopher street, to Bleecker street, to Abington square, to Eighth avenue, to West Fourteenth street, to Seventh avenue, to West Thirty Fourth street, to Eighth avenue, to West Fifty Fourth street, to Ninth avenue, to Columbus avenue, to West Seventy Third street, to Central Park West, to West Eighty First street, to Columbus avenue, to West Seventy Eighth street, to Broadway, to West Seventy Seventh street, to Amsterdam avenue, to West Seventy Fifth street, to West End avenue, to West Seventy Fourth street, then along West Seventy Fourth street and West



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Seventy Fourth street extended into the waters of the Hudson river and through said waters and that of the Upper Bay and the East river to the place of beginning including Governor's island, Liberty island Ellis island. (390,023)

Twentieth Congressional district. That part of the county of New York described as follows: Beginning at the intersection of the waters of the Hudson river and West Seventy Fourth street extended, then along West Seventy Fourth street extended and West Seventy Fourth street, to West End avenue, to West Seventy Fifth street, to Amsterdam avenue, to West Seventy Seventh street, to Broadway, to West Seventy Eighth street, to Columbus avenue, to West Eighty First street, to Central Park West, to Cathedral parkway, to Morningside drive, to Amsterdam avenue, to West One Hundred Forty Fifth street, to St. Nicholas avenue, to West One Hundred Fiftieth street and West One Hundred Fiftieth street extended through Colonial park to the intersection of West One Hundred Fiftieth street and Bradhurst avenue, then along Bradhurst avenue, to West One Hundred Forty Seventh street, to Eighth avenue, to West One Hundred Forty Fifth street, to Seventh avenue, then along Seventh avenue and Seventh avenue extended to the waters of the Harlem river, then northerly through said waters to the intersection with the Alexander Hamilton bridge, then westerly along the Alexander Hamilton bridge and its approaches, to Amsterdam avenue, to West One Hundred Seventy Fifth street, to Audubon avenue, to West One Hundred Seventy Fourth street, to St. Nicholas avenue, to West One Hundred Seventy Fifth street, to Wadsworth avenue, to West One Hundred Seventy Fourth street, to Fort Washington avenue, to West One Hundred Seventy Sixth street, to Pinehurst avenue, to West One Hundred Seventy Seventh street, to Haven avenue, then northerly along Haven avenue, to the approach to the George Washington bridge, to the George Washington bridge, to the waters of the Hudson river and through said waters to the place of beginning. (390,363)

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Twenty First Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the waters of the Harlem river and St. Ann's avenue extended, then along St. Ann's avenue extended and St. Ann's avenue, to Major Deegan expressway, to Bruckner expressway, to Longwood avenue, to Hewitt place, to Westchester avenue, to East One Hundred Sixtieth street, to Union avenue, to East One Hundred Sixty First street, to Eagle avenue, to East One Hundred Sixty Third street, to Washington avenue, to East One Hundred Sixty Fifth street, to Park avenue, to East One Hundred Sixty Seventh street, to Webster avenue, to Claremont parkway, to Bathgate avenue, to East One Hundred Seventy Second street, to Park avenue, to East One Hundred Seventy Third street, to Webster avenue, to Cross Bronx expressway, to Park avenue, to East Tremont avenue, to Bathgate avenue, to East One Hundred Seventy Eighth street, to Washington avenue, to East One Hundred Eightieth street, to Third avenue, to Quarry road, to Arthur avenue, to the intersection of Crescent avenue, Arthur avenue and East One Hundred Eighty Fourth street, then along East One Hundred Eighty Fourth street, to Third avenue, to East One Hundred Eighty Eighth street, to Park avenue, to East One Hundred Eighty Third street, to Webster avenue, to Ford street, to Tiebout avenue, to East One Hundred Eighty Third street, to Grand avenue, to West One Hundred Eighty Second street, to Jerome avenue, to West One Hundred Eighty First street, to University avenue, to Macombs road, to Nelson avenue, to Brandt place, to University avenue, to Tenney place, to Andrews avenue, to West One Hundred Seventy Fifth street, to University avenue, to Edward L. Grant highway, to West One Hundred Sixty Eighth street, to Shakespeare avenue, to Anderson avenue, to West One Hundred Sixty Sixth street, to Woodycrest avenue, to West One Hundred Sixty Fourth street, to Anderson avenue, to Jerome avenue, to Macombs bridge approach to Macombs bridge, to the waters of the Harlem river, then southerly through said waters to the place of beginning. (390,552)

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Twenty Second Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the waters of the Harlem river and St. Ann's avenue extended, then along St. Ann's avenue extended and St. Ann's avenue, to Major Deegan expressway, to Bruckner expressway, to Longwood avenue, to Hewitt place, to Westchester avenue, to East One Hundred Sixtieth street, to Union avenue, to East One Hundred Sixty First street, to Eagle avenue, to East One Hundred Sixty Third street, to Washington avenue, to East One Hundred Sixty Fifth street, to Park avenue, to East One Hundred Sixty Seventh street, to Webster avenue, to Claremont parkway, to Bathgate avenue, to East One Hundred Seventy Second street, to Park avenue, to East One Hundred Seventy Third street, to Webster avenue, to Cross Bronx expressway, to Park avenue, to East Tremont avenue, to Bathgate avenue, to East One Hundred Seventy Eighth street, to Washington avenue, to East One Hundred Eightieth street, to Third avenue, to Quarry road, to Arthur avenue, to the intersection of East One Hundred Eighty Fourth street, Arthur avenue, and Crescent avenue, then along Crescent avenue, to East One Hundred Eighty Seventh street, to Southern boulevard, to East Fordham road, to Boston road, to Pelham parkway north, to Bronx park east, to Allerton avenue, to White Plains road, to Waring avenue, to Bronxwood avenue and Muliner avenue, to Lydig avenue, to Bogart avenue, to Brady avenue, to Muliner avenue, to Neill avenue, to Bronxdale avenue, to Bronx park east, to Unionport road, along Unionport road and Unionport road extended to the intersection of Unionport road and Rhinelander avenue then easterly along Rhinelander avenue and Rhinelander avenue extended to Bronx River parkway, to Morris Park avenue, to East Tremont avenue, to Bronx Park avenue, to East One Hundred Seventy Seventh street, to the Cross Bronx expressway, to Westchester avenue, to Leland avenue, to Bruckner expressway, to Olmstead ave-

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... to Lafayette avenue, to Castle Hill avenue, to Lacombe avenue, to Bronx River avenue, to Randall avenue and Randall avenue extended to the waters of the Bronx river, then southerly and westerly through said waters, East river and Harlem river to the place of beginning, also including North Brother island, South Brother island, and Rikers island. (390,492)

Twenty Third Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the Bronx-Westchester county line with the Major Deegan expressway, then southerly along the Major Deegan expressway, to Jerome avenue, to Bainbridge avenue, to East Two Hundred Tenth street, to Steuben avenue, to East Moshulu parkway north, to Webster avenue, to Moshulu parkway, to the railroad tracks of the New York Central railroad to Bedford Park boulevard, to Webster avenue, to East Fordham road, to Park avenue, to Third avenue, to East One Hundred Eighty Eighth street, to Park avenue, to East One Hundred Eighty Third street, to Webster avenue, to Ford street, to Tiebout avenue, to East One Hundred Eighty Third street, to Grand Concourse, to East One Hundred Eighty Second street, to Jerome avenue, to West One Hundred Eighty First street, to University avenue, to Macombs road, to Nelson avenue, to Brandt place, to University avenue, to Tenney place, to Andrews avenue, to West One Hundred Seventy Fifth street, to University avenue, to Edward L. Grant highway, to West One Hundred Sixty Eighth street, to Shakespeare avenue, to Anderson avenue, to West One Hundred Sixty Sixth street, to Woodycrest avenue, to West One Hundred Sixty Fourth street, to Anderson avenue, to Jerome avenue, to Macombs bridge approach, to Macombs bridge, to the waters of the Harlem river, then northerly through said waters to the Bronx-New York county line, then northerly, westerly, and southerly along said line to the waters of the Harlem river, then through said waters and the Hudson river to the Bronx-



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Westchester county line, then easterly along said line to the place of beginning; and

That part of the county of New York beginning at the intersection of the waters of the Harlem river and the Alexander Hamilton bridge, then westerly along the Alexander Hamilton bridge and its approach, to Amsterdam avenue, to West One Hundred Seventy Fifth street, to Audubon avenue, to West One Hundred Seventy Fourth street, to St. Nicholas avenue, to West One Hundred Seventy Fifth street, to Wadsworth avenue, to West One Hundred Seventy Fourth street, to Fort Washington avenue, to West One Hundred Seventy Sixth street, to Pinehurst avenue to West One Hundred Seventy Seventh street, to Haven avenue, then northerly along Haven avenue, to the approach to the George Washington bridge, to the George Washington bridge to the waters of the Hudson river, then northerly through the waters of the Hudson river and the Harlem river to the Bronx-New York county line then northerly, easterly, to southerly, along said county line to the waters of the Harlem river, then southerly through said waters to the place of beginning.

(Bronx Part 253,936; Manhattan Part 136,292—390,228)

Twenty Fourth Congressional district. That part of the county of the Bronx described as follows: Beginning at the intersection of the Bronx-Westchester county line with the Major Deegan expressway, then southerly along the Major Deegan expressway to Jerome avenue, to Bainbridge avenue, to East Two Hundred Tenth street, to Steuben avenue, to East Mosholu parkway north, to Webster avenue, to Mosholu parkway, to the railroad tracks of the New York Central railroad, to Bedford Park boulevard, to Webster avenue, to East Fordham road, to Park avenue, to Third avenue, to East One Hundred Eighty Fourth street, to Crescent avenue, to East One Hundred Eighty Seventh street, to Southern boulevard, to East Fordham road, to Boston road, to Pelham parkway north, to Bronx Park east, to Allerton avenue, to White Plains

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road, to Waring avenue, to Bronxwood avenue and Muliner avenue, to Lydig avenue, to Bogart avenue, to Brady avenue, to Muliner avenue, to Neill avenue, to Bronxdale avenue, to Bronx Park east, to Unionport road, along Unionport road and Unionport road extended, to the intersection of Unionport road and Rhinelander avenue then easterly along Rhinelander avenue and Rhinelander avenue extended to Bronx River parkway, to Morris Park avenue, to East Tremont avenue, to Bronx Park avenue, to East One Hundred Seventy Seventh street, to the Cross Bronx expressway, to Westchester avenue, to Leland avenue, to Bruckner expressway, to Olmstead avenue, to Lafayette avenue, to Castle Hill avenue, to Lacombe avenue, to Bronx River avenue, to Randall avenue and Randall avenue extended to the waters of the Bronx river, then southerly and northerly through the waters of the Bronx river, East river, Long Island sound, to the Bronx-Westchester county line extended, thus westerly along said county line to the place of beginning, also including Hunters island, Middle Reef island, East Nonations island, South Nonations island, Machaux island, the Blauzes, Hart island, High island, Chimney Sweeps, Twin island, Rat island, Greenflats island, Big Tom island, Cuban Ledge island, City island and any other island not aforementioned.

(390,057)

Twenty Fifth Congressional district. The county of Putnam; and in the county of Westchester the towns of Cortlandt, Ossining, Mount Pleasant, Greenburgh and Eastchester; and the cities of Peekskill and Yonkers, except that portion of the city of Yonkers beginning at a point where Yonkers-New York city line meets Old Jerome avenue, then along Old Jerome avenue to McLean avenue, to the New York State thruway, to McMahon avenue, to Browning avenue, to Mildred street, to Vandenburg avenue, to Kimball avenue, to Mile Square road, to Bronx River road, to Edgewood avenue, then along Edgewood avenue to the Mt. Vernon-Yonkers city line, then southerly and westerly along

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the Mt. Vernon-Yonkers city line and the Yonkers-New York city line to the point of beginning.

(Putnam 31,722; Westchester Part 388,424—420,146)

Twenty Sixth Congressional district. That part of the county of Westchester described as follows: The towns of Yorktown, Somers, North Salem, Mamaroneck, Scarsdale, Lewisboro, Bedford, Pound Ridge, Pelham, New Castle, North Castle, Rye and Harrison; and the cities of White Plains, Mount Vernon, New Rochelle and Rye, and that portion of the city of Yonkers beginning at a point where Yonkers-New York city line meets Old Jerome avenue, then along Old Jerome avenue to McLean avenue, to the New York State thruway, to McMahon avenue, to Browning avenue, to Mildred street, to Vandenburg avenue, to Kimball avenue, to Mile Square road, to Bronx River road, to Edgewood avenue, then along Edgewood avenue to the Mt. Vernon-Yonkers city line, then southerly and westerly along the Mt. Vernon-Yonkers city line and the Yonkers-New York city line to the point of beginning.

(420,467)

Twenty-Seventh Congressional district. The counties of Rockland, Orange, Sullivan and Delaware. (Rockland 136,803; Orange 183,734; Sullivan 45,272; Delaware 43,540—409,349).

Twenty-Eighth Congressional district. The counties of Dutchess, Ulster, Columbia, Greene and Schoharie. (Dutchess 176,008; Ulster 118,804; Columbia 47,322; Greene 31,372; Schoharie 22,616—396,122).

Twenty-Ninth Congressional district. The counties of Albany and Schenectady. (Albany 272,926; Schenectady 152,896—425,822).

Thirtieth Congressional district. The counties of Rensselaer, Saratoga, Washington, Warren, Fulton, Hamilton and Essex. (Rensselaer 142,585; Saratoga, 89,096; Washington 48,476; Warren 44,002; Fulton 51,304; Hamilton 4,267; Essex 35,300—415,030).

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**Thirty-First Congressional district.** The counties of Clinton, St. Lawrence, Jefferson, Lewis, Franklin and Oswego. (Clinton 72,722; St. Lawrence 111,239; Jefferson 87,835; Lewis 23,249; Franklin 44,742; Oswego 86,118—425,905).

**Thirty-Second Congressional district.** The counties of Oneida, Madison and Herkimer. (Oneida 264,401; Herkimer 66,370; Madison 54,635—385,406).

**Thirty-Third Congressional district.** The counties of Chemung, Broome, Tioga and Tompkins. (Chemung 98,706; Broome 212,661; Tioga 37,802; Tompkins 66,164—415,333).

**Thirty-Fourth Congressional district.** The county of Onondaga. (423,028).

**Thirty-Fifth Congressional district.** The counties of Ontario, Yates, Seneca, Cayuga, Cortland, Chenango, Otsego and Montgomery. (Ontario 68,070; Yates 18,614; Seneca 31,984; Cayuga 73,942; Cortland 41,113; Chenango 43,243; Otsego 51,942; Montgomery 57,240—386,148).

**Thirty-Sixth Congressional district.** That part of the county of Monroe described as follows: Beginning at a point where the waters of the Genesee river and Charlotte harbor intersect the waters of Lake Ontario, then in a southerly direction through the waters of Charlotte harbor and the Genesee river to a point where the Genesee river intersects the city line, then along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, and then through the waters of Lake Ontario to the place of beginning; and the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, and Webster; and the county of Wayne. (Monroe, part 342,954; Wayne 67,989—410,943).

**Thirty-Seventh Congressional district.** That part of the county of Monroe described as follows: Beginning at a point where the waters of the Genesee river and Charlotte harbor intersect the waters of Lake Ontario, then in a southerly direction through the waters of Charlotte harbor



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and the Genesee river to a point where the Genesee river intersects the city line, then along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, then through the waters of Lake Ontario to the place of beginning; and the towns of Chili, Glarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Rush, Sweden and Wheatland; and the counties of Orleans, Genesee, Wyoming and Livingston. (Monroe, part 243,433; Orleans 34,159; Genesee 53,994; Wyoming 34,793; Livingston 44,053—410,432).

Thirty-Eighth Congressional district. The counties of Chautauqua, Cattaraugus, Allegany, Steuben and Schuyler. (Chautauqua 145,377; Cattaraugus 80,187; Allegany 43,978; Steuben 97,691; Schuyler 15,044—382,277).

Thirty-Ninth Congressional district. That part of the county of Erie described as follows: Beginning at a point where Starin avenue intersects the dividing line between the city of Buffalo and the town of Tonawanda, then along Starin avenue to Taunton place, to Standish road, to Parkside avenue, to North drive, to Sterling avenue, to Taunton place, to Norwalk avenue, to Linden avenue, to Parkside avenue, to Amherst street, to Nottingham terrace, to Elmwood avenue, to Lafayette avenue, to Main street, to LeRoy avenue, to Kensington avenue, to the east city line, then along said city line to the place of beginning; and that part of the city of Lackawanna described as follows: Beginning at a point where South Park avenue intersects the city lines of the city of Buffalo and the city of Lackawanna, then along South Park avenue, to Nason parkway, to Electric avenue, to Ridge road, to Franklin street, to Prospect place, to Center street, to Kirby avenue, to Electric avenue, to the intersection of Electric avenue, the south city line of the city of Lackawanna and the town line of Hamburg, then along said Lackawanna city line to the place of beginning; and the towns of Amherst, Clarence, Newstead, Cheektowaga, Lancaster, Alden, Marilla, Elma, West Seneca, Hamburg,

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Orchard Park, Aurora, Wales, Holland, Colden, Boston, Eden, Evans, Brant, North Collins, Collins, Concord, Sardinia and that part of the Cattaraugus Indian reservation within the county of Erie. (435,393).

Fortieth Congressional district. That part of the county of Erie described as follows: Beginning at a point where Starin avenue intersects the dividing line between the city of Buffalo and the town of Tonawanda, then along Starin avenue to Taunton place, to Standish road, to Parkside avenue, to North drive, to Sterling avenue, to Taunton place, to Norwalk avenue, to Linden avenue, to Parkside avenue, to Amherst street, to Nottingham terrace, to Elmwood avenue, to Amherst street, to Reservation street, to Grote street, to Howell street, to Amherst street, to Thompson street, to Hamilton street, then along Hamilton street and Hamilton street extended to the waters of the Niagara river, then northerly through the waters of the Niagara river to a point where Vulcan street extended intersects the waters of the Niagara river, then along Vulcan street and Vulcan street extended and the dividing line between the city of Buffalo and the town of Tonawanda to the place of beginning; and the towns of Tonawanda, Grand Island, city of Tonawanda and the Tonawanda Indian reservation; and the county of Niagara.

(Erie, part 193,415; Niagara 242,269—435,684)

Forty-First Congressional district. That part of the county of Erie described as follows: Beginning at a point within the city of Buffalo where Hamilton street extended intersects the waters of the Niagara river, then along Hamilton street extended and Hamilton street to Thompson street, to Amherst street, to Howell street, to Grote street, to Reservation street, to Amherst street, to Elmwood avenue, to Lafayette avenue, to Main street, to LeRoy avenue, to Kensington avenue, to the east city line of the city of Buffalo, along said city line and city line extended to the waters of Lake Erie, then northerly through

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the waters of Buffalo harbor, Lake Erie and Niagara river to the place of beginning including Squaw island; and that part of the city of Lackawanna described as follows: Beginning at a point where South Park avenue intersects the city lines of the city of Buffalo and the city of Lackawanna, then along South Park avenue to Nason parkway, to Electric avenue, to Ridge road, to Franklin street, to Prospect place, to Center street, to Kirby avenue, to Electric avenue, to the intersection of Electric avenue, the south city line of the city of Lackawanna and the town line of Hamburg, then along the city line of the city of Lackawanna to the place of beginning. (435,880).

§ 112. Definitions.

The words "county", "city", "town", "village", as used in this article referred to counties, cities, towns and villages as constituted on November first, nineteen hundred sixty-seven.

§ 2. The congressional districts of this state, as existing immediately prior to the effective date of this act, shall continue to be the congressional districts of the state for the purpose of filling vacancies in the office of representative in congress at any special election held prior to the general election of the year nineteen hundred sixty-eight.

§ 3. The congressional districts of this state, from and after the effective date of this act, shall be the congressional districts of the state for the purpose of designating and nominating candidates for representatives in congress, and for electing district delegates and alternate district delegates to national party conventions.

§ 4. This act shall take effect immediately.





JUL 30 1968

JOHN F. DAVIS, CLERK

## Supreme Court of the United States

OCTOBER TERM, 1968, NO. 238

DAVID I. WELLS,

Appellant,

*against*

NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Appellees.

## MOTION TO AFFIRM

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# Supreme Court of the United States

OCTOBER TERM, 1968, NO. 238

DAVID I. WELLS,

Appellant,

*against*

NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Appellees.

## MOTION TO AFFIRM

Pursuant to Rule 16 of the Revised Rules of this Court, the above-named appellees move to affirm the judgment appealed from on the ground that the questions presented by this appeal are so unsubstantial as not to require further argument.

### Statement

The present action was instituted in June, 1966 challenging the constitutionality of New York's 1961 Congressional Districting Act (L. 1961, ch. 980) as being violative of Article I, § 2 and the Fourteenth Amendment to the Constitution of the United States.

In its opinion issued on May 10, 1967, the statutory three-judge Court noted that the congressional districts under the 1961 Act ranged from 15.1% above average to 14.4%

below average, with six districts containing a population of more than 10% above average and seven districts being over 10% below average. Accordingly, the District Court held that "[o]n the basis of population inequality alone, the [New York 1961 Congressional Districting] Act fails to meet constitutional standards." *Wells v. Rockefeller*, 273 F. Supp. 984, 989 (S.D.N.Y., 1967). In view of this conclusion, the Court did not deal with plaintiffs' other objections concerning alleged lack of compactness and so-called partisan gerrymandering, except to note that with respect to the latter point, no proof had been offered. *Id.* at 987.

In determining an appropriate remedy, the District Court acknowledged that it might be preferable to defer requiring new congressional districts until the 1970 census since:

"Accuracy would call for a decree which would be based upon the 1970 census, knowledge of the number of congressional seats, and the immediate enactment in 1971 of a constitutional Act based upon the Supreme Court mandates, which Act would apply to the 1972 election of congressmen and which would retain jurisdiction in this court as a forum before which the litigants could press alleged failures to proceed. \* \* \*

*Id.* at 991,

However, the District Court interpreted the decisions of this Court in *Swann v. Adams*, 383 U. S. 210, 385 U. S. 440, as precluding such an extension.

In attempting to resolve this dilemma, the District Court directed the New York Legislature to enact into law a new congressional districting plan, effective no later than March 1, 1968, but at the same time, suggested a "compromise" solution, in the following words:

"\* \* \* Acting upon the assumption that accurate congressional representation (1972-1982) must await the

1970 census and upon the Supreme Court's understandable objection to protracted delay, a compromise may be in order. The 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present. There are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities. \* \* \* *Id.* at 992.\*

With this "solution" in mind, the 1968 Legislature drew new congressional districts for 29 of the State's 41 congressional seats. L. 1968, ch. 8. Since the Census Bureau advised State officials in the summer of 1967 that a new statewide census could not be completed before the fall of 1968 (R. 675-676)\*\*, the Legislature was required to employ 1960 census figures as affording the only available statewide population figures. See Interim Report of the Joint Legislative Committee on Reapportionment, pp. 3-6; R. 576-578.\*\*\*

\* The order of the District Court was affirmed, *per curiam* by this Court, Justice HARLAN dissenting, on Dec. 18, 1967. 389 U. S. 421. It should be noted that the District Court order prohibited the delineation of congressional districts upon considerations of race, sex or economic status, but did not contain a prohibition against any consideration of "politics" which plaintiffs had requested in the proposed order they submitted to the District Court. R. 304-306.

\*\* References preceded by the letter "R" are to the pages of the original Record that has been transmitted to this Court.

\*\*\* In drawing the new congressional districts on the basis of the 1960 census figures, the Legislature was aware of Federal court decisions which rejected attempts to use speculative population figures based on projected population growth and which insisted that the 1960 census figures be employed. See e.g., *Maryland Citizens' Committee for Fair Congressional Redistricting, Inc. v. Tawes*, 253 F. Supp. 731, 734 (D. Md., 1966), *aff'd sub nom. Alton v. Tawes*, 384 U. S. 315; *Klahr v. Goddard*, 250 F. Supp. 537, 546 (D. Ariz., 1966); *Grills v. Branigin*, 284 F. Supp. 176, 180 (S. D. Ind., 1968).



After reviewing the new congressional districts established by chapter 8 and analysing the rationale of the congressional districting plan as contained in the Interim Report of the Joint Committee on Reapportionment, *supra*, and the Attorney General's brief and as expounded by statements to the Court by counsel for the Legislature, the Court concluded that the Legislature had produced a constitutionally valid plan that "at least until the next census, will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts." 281 F. Supp. at 821, 826.

The objections to the new congressional districts raised by various intervenors concerning the division of certain neighborhoods in Brooklyn and The Bronx were rejected by the Court which found such divisions to be a necessary result of the creation of new congressional districts based on equal population. In overruling the objections of plaintiffs and objectants, the District Court noted that "no proof has been submitted that the Legislature acted in contravention of the precepts of the Supreme Court with respect to congressional reapportionment \* \* \*". *Id.* at 825.

In its judgment entered on April 1, 1968, the District Court decreed that the congressional districting plan set forth in Chapter 8 of the Laws of 1968 was in compliance with its prior order of July 26, 1967 (which, *inter alia*, ordered that the drawing of new congressional districts not be based upon considerations of race, sex or economic status) and that Chapter 8 was in conformity with the requirements of the Constitution of the United States. R. 549-550. Plaintiff David I. Wells has appealed from this judgment. The other original plaintiff, Donald S. Harrington, who prosecuted this action both individually and as Chairman of the State Committee of the Liberal Party of the State of New York, has not joined in this appeal.

## The Questions Presented By This Appeal Are Unsubstantial

A. *The decision of the District Court sustaining the constitutionality of New York's 1968 Congressional Redistricting Act is in conformity with the reapportionment decisions of this Court.*

In *Roman v. Sincock*, 377 U. S. 695, this Court advised (p. 710);

"\* \* \*.the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

See also: *Reynolds v. Sims*, 377 U. S. 533, 579; *Swann v. Adams*, 385 U. S. 440, 444.

Mindful of the teachings of this Court, the Court below examined the Congressional Districting Plan established by Chapter 8 of the New York Laws of 1968 and found that it passed constitutional muster.

In its opinion below, the District Court found that the population disparities, which were the source of plaintiffs' original complaint and the basis of its prior opinion invalidating New York's 1961 Congressional Districting Act (273 F. Supp. 984) have been remedied by the enactment of the 1968 statute.

The former congressional districts established by the 1961 Act ranged from 15.1% above average in the largest district to 14.4% below average in the smallest district. Six of the former congressional districts had a population that

was more than 10% above average and seven districts had a population that was 10% below the average population per district in the State. Under the 1968 Congressional Redistricting Act, there is no Congressional district in the State containing a population in excess of 10% of the average population per district.

In Kings County (Brooklyn), where the greatest population disparities were found in the 1961 Act, the Court below noted that "[a]lmost absolute equality has been contained for these seven districts, the range being from 417,040 to 417,478."

The minor population disparities under the 1968 statute were found by the District Court to rest upon rational considerations given by the Legislature to achieving equality of population throughout the State and within the natural geographic and economic regions within the State, the geographical conformation of the area to be districted, the maintenance of county integrity wherever possible, and the desire to avoid needless splitting of existing election districts in metropolitan areas which would require Boards of Election to change their enrollment books and to notify all registered voters of such changes. See Interim Report of the Legislative Committee On Reapportionment, R. 574-599; Testimony of counsel for the Legislature before the three judge Court, Steno. Minutes, Hearing of Mar. 12, 1968, pp. 22-71; R. 660-709.

Recognizing that the peculiar geographical contour of the State naturally divides into regions, the District Court found that it was rational for the Legislature to take these regions into account in establishing congressional districts so long as equality of population within the region and throughout the State remained the prime consideration, and so long as no discrimination had been shown.

For example, the Court found that it was logical in view of its population, interest, finances, charter, custom,

and history, to separate the City of New York from the rest of the State in establishing congressional districts. Since the 19 districts accorded New York City average 409, 109 per hypothetical district as against a State average of 409, 326, no charge of discrimination can be made, nor was made by any of the parties, with respect to such separation.

Since the area east of New York City contains only the Counties of Nassau and Suffolk, equality of population per district within this area required the establishment of five districts with populations ranging from 393, 585 to 393, 183.

In establishing congressional districts north of the New York City line, the Legislature adhered to county lines wherever possible. Westchester, a large county, was merged with adjacent Putnam, a small county to produce two districts of 420, 146 and 420, 467, respectively. None of the other counties north of New York City have been divided in the creation of congressional districts except for Monroe and Erie Counties, whose populations of 586,387 and 1,064,688 respectively, were too large to prevent their division.

While no district can be regarded as the private preserve for any incumbent if it offends the equality of population principle, the Legislature also recognized that effective representative government dictates against needless changes in congressional constituencies.\* Since, after the results of the 1970 census have been announced new congressional districts will, in all likelihood, have to be drawn in the State of New York in time for the 1972 elections, the Legislature had extra cause to maintain the congress-

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\* In *Reynolds v. Sims*, 377 U. S. 533, 583, this Court recognized that " \* \* \* Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, \* \* \* "



sional districts in the area of the State with small disparities in population. As a result, the congressional districts in the western half of the State, where no district under the 1961 statute exceeded the State mean by more than 6.6%, were left intact in the new statute.

Despite the fact that these western districts were not criticized in the prior opinion of the District Court overturning the 1961 statute, appellant now argues that districts with smaller disparities should have been created in this area. Although smaller disparities from the State mean could have been established in that area by creating new districts, the existing districts rest upon rational State policies. For example, the 38th C. D. which contains the largest deviation from the State mean (-6.6%) consists of the small agrarian counties of Chautauqua, Cattaraugus, Allegany, Steuben and Schuylar in the southwest portion of the state. Appellant suggests merging that district with a portion of Erie County. However, whereas the people of Erie and Niagara Counties form part of the same standard metropolitan statistical area and are treated as a unit in various Federal and State projects, the population of the five aforementioned southwest counties have no common interest or link with the people in Erie County. See Interim Report, *supra*, pp. 15-16; Steno. Minutes, Hearing of March 12, 1968, pp. 51-54.

Appellant's attempt to redraw the northern districts by shifting Lewis County from the 31st to the 32nd Congressional District and Hamilton County from the 30th to the 31st Congressional District merely reflect his refusal to recognize the geographic and historic factors which were considered by the Legislature. Lewis County, which is located within the Adirondack Preserve, traditionally has been linked with the northern counties that fall within this geographically isolated area (the so-called "Blue Line Counties"). S.M., Hearing of March 12, 1968, pp. 56-57. To have linked this county southward with

Oneida County, as appellant suggests, would have produced the illogical result of merging an Adirondack County with the Mohawk Valley metropolitan area. Appellant's suggestion with respect to Hamilton County, which would remove it from the same district with Fulton County, overlooks the fact that because of its small population, Hamilton County has historically been united in government and interest with Fulton County and has even been required under the New York Constitution to share the same Assembly seat. N. Y. Const. Art. III, § 5.

Appellant's plan, which was drawn by a private citizen, contains a somewhat smaller maximum deviation among its congressional districts than the plan enacted by the Legislature (4.7% as compared to 6.6%). But this small discrepancy cannot outweigh the fact that the Legislature's plan was enacted by the elected representatives of the entire population of the State and contains congressional districts which the Court below found to be substantially equal in population while affording recognition to rational State policies based on geographic and historic considerations.

**B. The 1968 Congressional Districts in New York compare favorably with other judicially sanctioned congressional districting plans.**

It should be acknowledged that the new congressional district lines in New York, with a maximum population deviation of 6.6% from the State mean, compare favorably with congressional districting plans that have been judicially approved in other states.

In Illinois, a Federal Three-Judge Court working in conjunction with the Supreme Court of Illinois adopted its own plan for 24 congressional districts which range in population from 7.5% above average to 6.1% below average. *Kirby v. Illinois State Electoral Board*, 251 F. Supp. 908 (N. D. Ill., 1965); *People ex rel. Scott v. Kerner*, 33 Ill. 2d 460, 211 N. E. 2d 736.

In *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz., 1966), a Federal Statutory Court also drew its own plan for three congressional districts which range in population from 5.18% above average to 6.64% below average.

In *Moore v. Moore*, 246 F. Supp. 578 (S. D. Ala., 1965), a Federal Statutory Court sustained a 1965 congressional districting act for eight congressional districts which ranged in population from 7.3% above average to 6.0% below average.

In *Kirk v. Gong*, 389 U. S. 574, this Court affirmed the judgment of a Florida District Court which had adopted a congressional districting plan whose largest district—based on 1960 census figures—is 8.78% above the State mean.

In overlooking these decisions, appellant places his principal reliance on the decision of the District Court in *Preisler v. Secretary of State of Missouri*, 279 F. Supp. 952 (W. D. Mo., 1967). However, the *Preisler* decision was based on considerations which are entirely inapposite to the situation in New York. The Missouri Federal Court, in invalidating the 1967 Congressional Districting Act, held that the districts created by that Act in rural areas were over-valuated in contrast to districts in metropolitan areas and that the Act particularly discriminated against the metropolitan area of St. Louis and Kansas City. *Id.* at 975. By contrast, no claim has been made, nor can be made, that the new congressional districts in New York discriminate against any metropolitan area. Moreover, the District Court in Missouri believed that the Legislature had decided that it could create minor deviations among districts under a so-called "de minimus" rule without having to present any rational considerations for such deviations.

The New York Legislature did not choose a 6.6% maximum deviation as a "safe tolerance" figure within which

districts could be created. It recognized, as this Court has pointed out:

" . . . the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State. 'What is marginally permissible in one State may be unsatisfactory in another, depending upon the particular circumstances of the case. *Reynolds v. Sims*, 377 U. S. 533, 578.' " *Swann v. Adams*, 385 U. S. 440, 445.

Rather, as described above, the present congressional districts in New York were the result of legislative determination to create congressional districts that were equal in population with minor disparities only where necessary to afford recognition to natural geographic regions and to the integrity of county and election district lines.

**C. Appellant's claim of partisan gerrymandering presents a non-justiciable issue, and, in any event, is totally without merit.**

In attempting to challenge the constitutionality of New York's 1968 Congressional Districting Act upon the ground of "partisan gerrymandering", appellant has raised a "non-justiciable issue" which Federal Courts consistently have refused to consider. See e.g., *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916, 925-926 (S.D.N.Y. 1965), *aff'd*, 382 U. S. 4; *Bush v. Martin*, 251 F. Supp. 484, 513 (S. D. Tex. 1966); *Sincock v. Gately*, 262 F. Supp. 739, 831-833 (D. Del. 1967); see also *Jones v. Falcey*, 48 N. J. 25, 222 A. 2d 101, 105 (1966).

In *WMCA, Inc. v. Lomenzo*, this Court affirmed the judgment of the District Court which, in sustaining the constitutionality of a legislative plan (Plan A), had held that claims of partisan gerrymandering did not raise a Federal constitutional issue. In his concurring opinion,



MR. JUSTICE HARLAN observed (382 U. S. at 5-6):

"In *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916 the three-judge Court found that Plan A satisfied this order; in so doing it rejected contentions that apportioning on a basis of *citizen* population violates the Federal Constitution, and that partisan 'gerrymandering' may be subject to federal constitutional attack under the Fourteenth Amendment. In affirming this decision, this Court necessarily affirms these two eminently correct principles."

In *Badgley v. Hare*, 385 U. S. 114, an appeal from the decision of the Supreme Court of Michigan (377 Mich. 396) contending that the apportionment scheme approved by that Court was based on political gerrymandering, was dismissed by this Court "for want of a substantial Federal question".

Even assuming, *arguendo*, that a claim of partisan gerrymandering presented a justiciable issue under the Federal Constitution, appellant failed to present such evidence before the District Court as would be required to sustain his burden of proof on this issue. *Cf. Wright v. Rockefeller*, 211 F. Supp. 460 (S.D.N.Y. 1963), *aff'd* 376 U. S. 52, *reh. den.* 376 U. S. 959; *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D.N.Y. 1963), *aff'd* 376 U. S. 222. With respect to this issue, appellant's argument merely consisted of the charge that the non-rectangular shape of certain congressional districts, in and of itself, demonstrated that the New York Legislature was guilty of partisan gerrymandering in the enactment of Chapter 8 of the Laws of 1968. However, such an argument fails to come to grips with the actual meaning of a "gerrymander".

A "gerrymander" has been defined as:

"\* \* \* the abuse of power whereby the political party dominant at the time in a Legislature arranges con-

stituencies unequally so that its voting strength may count for as much as possible at elections and that of the other party or parties for as little as possible. To accomplish this design it masses the voters of the opposing parties in a small number of districts and so distributes its own voters that they can carry a large number of districts by small majorities", 6 *Encyclopaedia of the Social Sciences* 638 (1931).

Neither appellant, nor any other objectant below, demonstrated that there was any abuse of power in the enactment of Chapter 8 by the Legislature. In terms of political realities, since the New York Legislature is politically divided (with the Democratic Party controlling the Assembly and the Republican Party controlling the Senate), it would have been impossible for any redistricting bill to have passed both houses if it had been drawn to favor a political party. Instead, Chapter 8 received overwhelming bi-partisan support in passing the Assembly by a vote of 126 to 19 and the Senate by a vote of 51 to 5. *N. Y. Times*, Feb. 27, 1968, p. 1.

In his Jurisdictional Statement, appellant attacks three congressional districts as examples of so-called "partisan gerrymandering". He contends that the new 23rd Congressional District in the Bronx and Manhattan was drawn "to make more difficult" the re-nomination of the incumbent Congressman, Jonathan Bingham. However, appellant does not point out that drawing districts that are equal in population necessarily required the division of at least one Bronx district with Manhattan since the population of the Bronx was insufficient to support four full congressional districts. The southwest extension of the 23rd District, which appellant criticizes, is an area that is linked to Manhattan by four bridges. As for making Congressman Bingham's renomination "more difficult", it is interesting to note that Congressman Bingham easily won renomination in the June 18th primary by a

vote of 27,699 to 13,685. *N. Y. Times*, June 20, 1968, p. 40.\*

Appellant attacks the shape of the upstate 35th Congressional District which he describes as an "anomaly". Yet, there is nothing anomalous about this district which consists of eight ~~agrarian~~ counties (all of which are undivided) located in the lower Mohawk Valley. Again, it is interesting to note that appellant criticized this district when he testified as a witness on behalf of the plaintiff in *Honeywood v. Rockefeller, supra*, in 1962 contending that the district was drawn to insure the election of a Republican congressman. Yet, the Democratic Party has elected its candidate in each of the four elections that have taken place since this district was created.

Finally, appellant attacks the 6th Congressional District in Queens and argues that a statement offered to the Court by Donald Zimmerman, a spokesman for the majority leader of the Senate (and not appellee's counsel—as appellant erroneously describes him at page 14 of his Jurisdictional Statement) constitutes a concession that this district was drawn to provide a minority with some representation. If Mr. Zimmerman's statement is read in the full context of his remarks before the District Court, it will be seen that he was speaking hypothetically with reference to appellant's contention that the districts in Queens County ~~had been gerrymandered since the Republican Party was expected to win in one of its four districts.~~ In answer to this contention, Mr. Zimmerman had argued that he could see nothing improper if a party which received 43% of the total vote in a county is expected to capture one of its four congressional districts.

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\* The particular portions of the 23rd Congressional District which were criticized as having been added to the District to insure Congressman Bingham's defeat in the primary (the 71st and 73rd Assembly Districts in Manhattan and the 76th and 82nd Assembly Districts in the Bronx) were carried by Congressman Bingham by a vote of 14,134 to 8,285.

There is nothing in Mr. Zimmerman's statement that is inconsistent with any decision of this Court. Indeed, it would appear to be supported by this Court's observation in *Fortson v. Dorsey*, 379 U. S. 433, 439, that a multi-member constituency apportionment scheme which operates to minimize or cancel out the voting strength of racial or political elements of the voting population might be unconstitutional. See also *Dixon, "Reapportionment Perspectives; What is Fair Representation"*, 51 Amer. Bar Ass'n J. 319 (1965). However, regardless of the merit of Mr. Zimmerman's contention, it cannot be attributed to the New York Legislature, whose statement of policy with respect to the drafting of the new congressional districts is set forth in the Interim Report of the Joint Legislature Committee on Reapportionment, *supra*. \*

In sum, appellant's contentions with respect to "partisan gerrymandering" amount to nothing more than undocumented charges resting upon pure conjecture. Appellant obviously would have preferred the adoption of his own districting plan. But, as the Court below correctly observed (281 F. Supp. at 825):

"The Legislature cannot be expected to satisfy, by its redistricting action, the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side.

. . . . .

• • • Were each political party, and factions within each party, permitted to by-pass the Legislature by asking the courts to foist upon the electorate districts of their own draftsmanship and choosing, representative government would no longer exist. Self-interest would be substituted for majority rule. The courts cannot become pawns in such a political chess game."



**CONCLUSION**

**For the foregoing reasons, the judgment appealed from should be affirmed.**

**Dated: New York, New York, July 23, 1968.**

**Respectfully submitted,**

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Office-Supreme Court, U.S.

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In The

**Supreme Court of the United States**

**October Term, 1968**

**No. 238**

**DAVID I. WELLS,**

*Appellant,*

**NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,**

*Appellees.*

**BRIEF FOR APPELLANT**

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*Appellees.*

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**BRIEF FOR APPELLANT**

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**Opinions Below**

The opinion of the three-judge court dismissing the complaint (A. 44-50) is reported at 281 F. Supp. 821. The prior opinion of that court, holding an earlier New York State congressional districting statute invalid, and retaining jurisdiction (A. 20-36), is reported at 273 F. Supp. 984. The prior opinion of this Court affirming that earlier judgment (A. 40-43) is reported at 389 U.S. 421.



## Jurisdiction

On April 1, 1968, the three-judge court entered an order and judgment dismissing the complaint which had sought to enjoin defendant state officials from performing various procedures in connection with the election of Members of the United States House of Representatives from New York State because the New York State congressional districting laws of 1961 and 1968 were asserted to violate Article I, Section 2 and the Fourteenth Amendment to the Constitution of the United States. A notice of appeal to this Court was filed in the district court on April 30, 1968. The jurisdictional statement was docketed in the Supreme Court of the United States on June 26, 1968. This Court noted probable jurisdiction on October 14, 1968, reported at 393 U.S. ....

This suit was brought under Article I, Section 2 and the Fourteenth Amendment of the United States Constitution, and under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 1343(3). Declaratory relief was sought under 28 U.S.C. §§ 2201, 2202, and 2281 et seq. The jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b).

### Constitutional and Statutory Provisions Involved

This appeal presents a claim that Chapter 8 of the New York Laws of 1968 (A. 74-104) is invalid because it violates those portions of the Constitution of the United States set forth below:

#### Article I, Section 2:

The House of Representatives shall be composed of Members chosen every second year by the People of the several States . . .

#### Fourteenth Amendment, Section 1 (second sentence):

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Statement

Appellant, David I. Wells, is a citizen of the United States, and a resident of Queens County in the City and State of New York. He is a taxpayer and a registered voter of said county, city, and state. As such he is entitled to vote for candidates for the House of Representatives in the sixth congressional district of New York State in which he also resides.

Appellant was one of two plaintiffs (the other not being joined in this appeal) who filed this suit on June 29, 1966, in the United States District Court for the Southern District of New York against appellee Nelson A. Rockefeller, Governor of New York State, and other state officials directly implicated in the process by which the Members of the House of Representatives from New York State are chosen by the voters of that state.

In the original complaint plaintiffs asked for the convening of a three-judge court which was in turn asked to hold invalid and unenforceable Article VII, Section 111, Chapter 980 of the Laws of 1961 of New York State (effective from January 1, 1962) as being contrary to Article I, Section 2 and the Fourteenth Amendment to the Constitution of the United States. Accordingly, plaintiffs asked that the court restrain defendants Rockefeller, Lefkowitz, and Lomenzo from in any way implementing the complained-against provisions of the election laws. Appellants further asked the court to direct defendants Wilson and Travia,\*

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\* Anthony J. Travia is now a judge of the United States District Court for the Eastern District of New York and thus no longer involved in this appeal. No successor has been chosen for his former position as Speaker.

in their capacity as legislative leaders in the State of New York, "to take such action as may be directed by this Court to secure compliance with the Constitution of the United States."

A three-judge court was convened to hear the matter, and the issues were framed by plaintiffs' motion for summary judgment and defendants' motion to dismiss the complaint. Relevant facts about the statute were these: On the basis of the 1960 census figures Congress reduced the number of New York's Congressional Representatives from 43 to 41, and Chapter 980 was enacted to establish the boundary lines of these 41 districts. However, as the court below found, the districts did not satisfy the test of "equal representation for equal numbers of people" established in *Wesberry v. Sanders*, 376 U.S. 1, 18. For example, the twelfth district (part of Kings County) had a population of 471,001, 15.1 per cent above average, while the adjoining fifteenth district (also part of Kings County) had a population of 350,635, 14.3 per cent below average—a spread between these two contiguous districts of 29.4 per cent.

The court, after pointing out other excessive population differentials, observed that further comment on "the seemingly bizarre structure of the present Congressional districts is unnecessary" to the holding of unconstitutionality. 273 F. Supp. at 987. Accordingly, the court held that "reapportionment is required." *Id.* at 989. The court said the legislature should "divide the State into 41 substantially equal parts, provided they be reasonably compact and contiguous." *Id.* at 991. And the legislature was warned against allowing "considerations of race, sex, economic status or politics to cross their minds." *Ibid.* As to timing the right was declared to be a present one; accordingly, the district court ruled that no further elections could be held based on the invalid districts. The court ruled (at 992):

a plan must be created by the 1968 Legislature which will provide for congressional districts in conformity

with the Supreme Court's precepts so that the people of the State of New York may vote for their congressmen from such districts in the 1968 congressional elections.\*

The judgment of the District Court was affirmed *per curiam* by this Court on December 18, 1967. 389 U.S. 421. Mr. Justice Harlan dissented, believing that "the time has come for this Court to provide clearer guidance to the lower courts on the proper remedy in reapportionment cases." *Id.* at 424.

The New York Legislature took no action until February 26, 1968, a date so late that it was then impractical to secure effective review of a district court decision upholding the validity of the revised districts. It thus became necessary to hold the 1968 election under the new plan unless (as no one favored) election of all 41 Congressmen should be at large.\*\*

The plan adopted by the legislature on February 26, 1968 (Chapter 8 of the Laws of 1968) left population disparities ranging up to 6.6 per cent variation from the state average district population producing a spread between the least populous and the most populous district in excess of 14 per cent. The "lack of compactness" complained against in the original complaint, which had been described as "bizarre" by the court, remained unchanged in many districts and little changed in others. Although the district

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\* The court also invited legislative consideration of population statistics later than the 1960 census figures, suggesting a projection to December 31, 1966. 273 F. Supp. at 992. However, this was rejected by the legislature and not further adverted to by the court in its subsequent opinion. 281 F. Supp. 821. The issue is not raised in this case.

\*\* The hearing before the three-judge court was on March 12, 1968; the opinion was delivered on March 20; and judgment was entered on April 1, the day before the first day to circulate nominating petitions for the primary to be held on June 18, 1968.



court had said in its 1967 opinion that "there is a burden on the proponent of any districting plan to justify deviations from equality" (273 F. Supp. at 987), defendants (hereafter the State) advanced no justification for continued population deviations and continued lack of compactness other than the exigencies of time, the legislative purpose to disrupt existing voting patterns as little as possible, and the desire to increase representation of the minority party in Congress.

The district court, which had retained jurisdiction of the action, received objections, including those of intervenors, at a hearing on March 12, 1968 (A. 105-42). The State sought to justify the plan on the basis of the explanation for the changes that appeared in the Interim Report of the Joint Legislative Committee on Reapportionment (A. 53-73) and the testimony of witnesses at the hearing.

Intervenors Frederick W. Richmond, a resident of the fourteenth district, Eugene Victor, a resident of the old twelfth and the new fifteenth district, and Armand J. Starace, a resident of the Bay Ridge area of Kings County, all complained of the way the districts were drawn in that county. They argued that the integrity of neighborhoods had been violated and that the new lines represented bipartisan agreement to protect incumbents.

Intervenors Mary Leff and Kathryn Goldman objected to the new lines for the twenty-first and twenty-third districts in Bronx County.

Intervenors Andrew Cooper, Paul S. Kerrigan, and Joan C. Bacchus were primarily interested in Kings County districts. John R. Pillion also intervened.

Intervenors Samuel I. Popack, Simon Goldman, Shirley Levitin, Danny Carter, Israel Chanowitz and Rabbi S. H.

Fox objected to the division of their community, Crown Heights in Brooklyn, between the new tenth and twelfth districts.

In an opinion announced on March 20, 1968, the three-judge court upheld the plan, observing that it would give the voters "an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts." 281 F. Supp. at 826. This Court noted probable jurisdiction on October 14, 1968 (393 U.S. ....). No intervenor perfected an appeal.

### Summary of Argument

The principle of substantial population equality is now firmly established as the standard applicable to state legislative election districts (*Reynolds v. Sims*, 377 U.S. 533), congressional districts (*Wesberry v. Sanders*, 376 U.S. 1), and election districts for units of local government (*Avery v. Midland County*, 390 U.S. 474). Compliance with the equal-population requirement of the two 1964 decisions—*Reynolds* in relation to state legislative districts and *Wesberry* in relation to congressional districts—has been substantial; and there is no reason to doubt that *Avery*, making the same principle applicable to units of local government, will be implemented with equal promptness.

The principle for which these decisions stand is extremely important for representative government in the United States. Implementation of the equal-population standard has gone far to restore public confidence in a system that seemed undemocratic and unfair so long as malapportionment prevailed in most legislative bodies and continued to increase nearly everywhere.

It would be a mistake, however, to believe that the problems of inequality in representative government are

solved by a determination that "as nearly as is practicable one man's vote . . . is to be worth as much as another's." *Wesberry v. Sanders*, 376 U.S. at 8. Compliance with the letter of this ruling eliminates the most apparent voting rights discrimination, which might be called population gerrymandering. Without more, however, equality-subverting gerrymandering remains possible in subtle but equally virulent forms. Even within a framework of absolute equality, discrimination against (or in favor of) a political party or a racial, ethnic, or socioeconomic group requires no special skill beyond the ability to read election returns plus an understanding of the demographic factors of rural areas and city neighborhoods. Appellant contends that the 1968 congressional districting act for the State of New York represents exactly such a practice and should be forbidden as a violation of Article I, Section 2 and the Fourteenth Amendment to the Constitution. To understand why this is so, it is necessary to recall some recent political history in New York State and to note the following interlocking aspects of the 1968 New York Statute: (1) The 1968 act did not achieve population equality among the districts "as nearly as is practicable," and the State offered no satisfactory explanation of this failure to meet the equal-population standard. Indeed, witnesses for the State frankly stated that a principal objective of the districting was to achieve political balance. (2) The inconsistent treatment of counties, towns, and cities, which were sometimes broken without apparent reason, and the bizarre shapes of a number of the districts, in urban and rural areas alike, suggest, in the absence of convincing explanation to the contrary, a districting purpose designed to serve a partisan end.

When the complaint in this case was filed in 1966, the challenge was to the 1961 congressional districting act, which was invalidated by the three-judge federal district court in 1967 in a decision affirmed by this Court. The act

now challenged was approved in February, 1968 by a legislature consisting of a Republican-controlled Senate and a Democratic-dominated Assembly. It is the contention of appellant that the 1968 act was the result of a bipartisan agreement, providing for each party as many "safe" seats as could be agreed upon. To understand this proposition, which of course nowhere appears as a matter of record, it is instructive to recall the political history of New York State.

In the half century before 1964 New York State gave its electoral votes almost evenly to Republican and Democratic presidential candidates and divided its electoral favors rather evenly between Republican and Democratic governors and United States Senators. Yet, during that period the Democrats won control of the state legislature only twice before 1964, in which year the Democrats gained control of both houses in the nationwide sweep of President Johnson over Senator Goldwater. During that long period New York was described as a "two-party state with a one-party Legislature." Tyler and Wells, New York: "Constitutionally Republican," in Jewell (ed.), *The Politics of Reapportionment* 221 (1962).

After 1965, however, control of the New York Legislature was divided between the parties, making it impossible for either party to establish congressional lines for its exclusive advantage. The 1968 act reflects that new spirit of accommodation.

The Court has suggested that although "it may not be possible to draw congressional district lines with mathematical precision," *Wesberry v. Sanders*, 376 U.S. at 18, the standard of equality is more exacting in congressional districts than in state legislative districts. *Reynolds v. Sims*, 377 U.S. at 578. From this it could be contended that congressional districts should be made perfectly equal in terms of population, which is entirely possible by disregard-



ing political subdivision lines wherever necessary to achieve nearly exact equality. At least eight state legislatures have chosen this route, with the result that no district exceeds the state norm by more than 2 per cent. There are, however, dangers in this practice which may conceal discriminatory gerrymandering under the bland surface of population equality.

Alternatively, a larger number of state legislatures have chosen to construct their congressional districts to the extent permissible along political subdivision lines, permitting some population variances so long as they are not excessive. Although this formula raises problems of defining "excessiveness," it is possible to measure the fairness of the plan in terms of consistency of adherence to the stated formula. As this Court observed in *Reynolds v. Sims*, 377 U.S. at 578-79,

Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.

At first glance it appears that the substantial population inequalities that result from the 1968 congressional districting act might be justified by the State's "desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme." *Id.* at 578. Indeed, witnesses for the State at the hearing before the court below explicitly stated the intent to preserve counties and towns wherever possible (A. 124-25, 134, 135). When it came to cities, however, where most New Yorkers live, the witnesses sometimes spoke of preserving their unity, as in the case of New York City (A. 112), while at other times disregarding the unity of a city, as in the case of Rochester, which was divided down the middle (A.

125).<sup>\*</sup> Moreover, the 1968 plan divided two cities (Lackawanna and Yonkers) and one town (Islip) without satisfactory justification. The population deviations remain unexplained unless perhaps by the political motivation that admittedly influenced other decisions. Finally, many of the district shapes remain "bizarre," as described by the district court in its 1967 opinion, *Wells v. Rockefeller*, 273 F. Supp. 984, 987.

All these difficulties with the 1968 act are readily ascertainable by comparing population figures and physical contours of the districts now in effect under the 1968 plan with the plan suggested by appellant to the court below as early as 1966, shortly after the complaint was filed. Appellant does not suggest that his is the only permissible plan, or even the best, but simply that a plan was readily available to legislature and court that would produce greater equality, fewer divisions of political subdivision lines, and more compact districts.

Appellant accordingly urges this Court to hold the 1968 act invalid and to enjoin its further use as the basis for congressional elections in the State of New York.

## ARGUMENT

### I.

The equal-population principle is vital to the effective functioning of representative government.

Malapportionment and gerrymandering for partisan, racial, ethnic, or socioeconomic purposes are anti-egalitarian and destructive of the democratic ideal of representative

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<sup>\*</sup> Rochester could have been kept as a unit at the expense of about 10,000 population deviation (about 2.5% deviation), far less than the maximum deviation in the 1968 plan or more than 33,000 from the norm.

government. Until this Court's decisions in *Wesberry v. Sanders*, 376 U.S. 1, *Reynolds v. Sims*, 377 U.S. 533, and *Avery v. Midland County*, 390 U.S. 474, malapportionment and gerrymandering practices were firmly entrenched in nearly all American legislative bodies. Even worse, the practice was on the increase, and ordinary voters had come to believe, cynically but understandably, that no effective remedy was available at the polls.

All that changed after the recognition in *Baker v. Carr*, 369 U.S. 186, that impairment of individual voter rights is within the jurisdiction of federal courts and is a justiciable question. It was not long after *Baker v. Carr* that this Court dealt decisively with the malapportionment issue in congressional districting (*Wesberry v. Sanders*), state legislative districting (*Reynolds v. Sims*), and election districts for units of local government (*Avery v. Midland County*). Although the language was slightly different in the three cases, the sense of each was, as stated in *Wesberry*, 376 U.S. at 8, that "as nearly as practicable one man's vote . . . is to be worth as much as another's."

Compliance with the letter and spirit of the 1964 decisions, *Wesberry* and *Reynolds*, has been substantial.\* And there is no reason to doubt that *Avery*, making the same principle applicable to units of local government, will be implemented with equal good faith and promptness. But there remain two questions on which further guidance from this Court is needed. First, the meaning of "substantial population equality" should be further clarified. Second, assuming that a gerrymander designed to discriminate for or against any identifiable group is forbidden, a matter discussed in part III of this brief, guidance is needed as to

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\* See Dixon, *Democratic Representation: Reapportionment in Law and Politics* 290-384 (1968); McKay, *Reapportionment Reappraised* (Twentieth Century Fund pamphlet 1968).

the kind and quantum of proof required to establish a forbidden gerrymander.

The present appeal presents both these questions. Appellant contends that the standard of "substantial population equality" is not met by New York's 1968 congressional districting act and that there is sufficient evidence of a discriminatory gerrymander to require invalidation of the act in question.

## II.

The 1968 congressional districting act of New York State violates the equal-population principle of *Weesberry v. Sanders*, 376 U.S. 1.<sup>2</sup>

A. The population inequalities in the 1968 congressional districting act are "constitutionally impermissible."

The equal-population principle cannot be reduced to a mathematical formula. It would be unwise for this Court to fix a maximum permissible population deviation from the average in terms of percentage points. There would be no rational justification for a standard of 5 per cent, for example, as compared with 4 per cent or 6 per cent or any other percentage figure.\*

This Court has already provided considerable guidance as to the applicability of the equal-population principle in

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\* Congress may have more latitude in this respect because of its authority to define, implement, and enforce provisions of the Constitution. See *United States v. Price*, 383 U.S. 787; *United States v. Guest*, 383 U.S. 745. But Congress has not agreed upon any definition, thus leaving the matter for adjudication on a case-by-case basis, which is probably the better practice. See Note, *Congress in the Thicket: The Congressional Redistricting Bill of 1967*, 36 *Geo. Wash. L. Rev.* 224 (1967). In any event, Congress could not take from this Court its authority to rule on the constitutionality of any districting statute, regardless of congressional definition.



congressional districting cases. The steps in the formulation of the controlling principle are three:

*First.* In *Wesberry v. Sanders*, 376 U.S. 1, 7-8, this Court stated the basic proposition as follows:

We hold that, construed in its historical context, the command of Art. I, § 2, that Representatives be chosen "by the People of the several States" means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.

*Second.* Within a few months of the decision in *Wesberry* this Court in *Reynolds v. Sims*, 377 U.S. 533, made the equal-population principle applicable to state legislative districts as a function of the equal-protection of the laws clause of the Fourteenth Amendment. The opinion explained the possible differences between the population standard as applied to state legislative districts and to congressional districts:

some distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State. . . . Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting. *Id.* at 578.

Thus was established the proposition that a higher degree of equality is required in congressional than in state legislative districting.

*Third.* The final basic proposition in the definition of equality is that the burden of justification for any deviation from districts of equal population must rest upon the state, which must provide "constitutionally permissible" reasons. *Id.* at 579. This proposition was previewed in *Reynolds* where this Court said that:

neither history alone, nor economic or other sorts of group interests are permissible factors in attempting to justify disparities from population-based representation. *Id.* at 579-80.

In *Wesberry* this Court observed that "it may not be possible to draw congressional districts with mathematical precision . . . ." 376 U.S. at 18. The same point was made in *Reynolds v. Sims*, 376 U.S. at 577 in connection with state legislative districts. But population deviations are permissible only within narrow limits. *Reynolds* confined allowable deviations to those minor variations which "are based on legitimate considerations incident to the effectuation of a rational state policy." 377 U.S. at 579. But the principal statement came in 1967 in *Swann v. Adams*, 385 U.S. 440, where variations in the Florida legislative formula of 30 per cent among senate districts and 40 per cent among house districts were unexplained in any rational way by the State. This Court said:

*De minimis* variations are unavoidable, but variation of 30% among senate districts and 40% among house districts can hardly be deemed *de minimis* and none of our cases suggest that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy. *Id.* at 444.

In *Jones v. Falcey*, 48 N. J. 25, —, 222 A.2d 101, 107-108, the New Jersey Supreme Court elaborated this proposition as follows:

The Constitution, as construed in *Wesberry* and *Reynolds* does not contemplate that there is a range of deviation within which a State may maneuver, with or without reason. On the contrary, the command is to achieve equality, and a limited deviation is permissible only if there exists an acceptable reason for the deviation. So a limited deviation may be acceptable if it is needed to stay with the lines of existing political subdivisions and thus to avoid the spectre of partisan gerrymandering. But the deviation may not exceed what the purpose inevitably requires. In other words, the command is to achieve population equality "as nearly as practicable," and if equality would be more nearly achieved by shifting whole municipalities to a contiguous district, the draftsman has not achieved equality "as nearly as practicable," unless some other constitutionally tenable reason (if there is any) can be shown to justify the disparity. If the lines of political subdivisions are ignored, there is no apparent reason for not achieving mathematical equality, subject of course to inevitable *de minimis* variations.

From the above-outlined three propositions emerges the basic principle that should control the present appeal: Except for inconsequential population variations, all deviations from the districting norm must be justified by the state on some rationally permissible principle other than "deference to area and economic or other group interests." *Reynolds v. Sims*, 377 U.S. at 447.

Formulation of the principle in these terms is not mathematical shibbolethism. The very real justification for such an exacting standard is that, if line-drawers are given larger latitude, they can distort the electoral process by the construction of districts that will serve partisan or other impermissible purposes rather than fair representation of

all voters in a democratic system. Again, the point was made in *Reynolds*, 377 U.S. at 578-79:

Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.

Before discussing the applicability of this principle to the present appeal, it may be appropriate to examine acceptable premises for congressional districting. The following two approaches appear to be constitutionally permissible. Under one theory a state may seek nearly precise mathematical equality among the districts, allowing only deviations that are assuredly *de minimis*. A number of states have elected this route, including at least eight in which the maximum deviation from the state average is 2 per cent or less.\* In Massachusetts, for example, the congressional districting plan ignored county lines completely to secure a measure of equality in which the maximum deviation was only 1.1 per cent, and the population of the most populous district exceeded that of the least populous by only 8,717, a difference of 2.1 per cent. 1967 Mass. Gen. Laws c. 472. The same is true in Ohio under its 1968 redistricting act where county lines were broken in many cases to produce a maximum deviation from the norm of 1.4 per cent and a population differential between the least and most populous districts of only 9,881, amounting to 2.4 per cent. 1968 Ohio S. Bill No. 462.

Interestingly enough, the remarkable degree of equality achieved in these two cases did not involve sacrifice of all political subdivision lines as district boundaries. In Massachusetts, where counties may be less significant than in a number of other states, the more important town and city

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\* See appendix C to this brief, Population Disparities Among Congressional Districts, by States.



lines are respected. The only city divided among congressional districts is Boston, whose population far exceeds the norm for a single district. Similarly, in Ohio outside the large urban counties where division is made along ward lines, the district lines typically follow township lines where it is necessary to break county lines.

A second theory of congressional districting, probably also valid, is to determine in advance that county, town, and city lines will be respected wherever the population of those units is not large enough to require division. Of course, even here some figure must be kept in mind as the point beyond which deviations will be regarded as excessive, necessitating some departure from political subdivision lines. This was the approach of the alternative plan for congressional districts first suggested by appellant to the court below in 1966, before the first decision. The controlling principles are set forth in the margin;\* and the plan itself appears in Appendices C-E to this brief.

Ostensibly, the Joint Legislative Commission on Reapportionment used a similar approach. However, it is manifest that in the resulting 1968 New York act no single standard controlled the entire process, thus permitting, as

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\* "Districts shall be equal in population except where variations result from application of the principles listed below, but no such variation may exceed five per cent of the average population of all the districts. Districts shall consist of contiguous territory, but land areas in counties separated by waterways shall not be included in the same district unless said waterways are traversed by bridges wholly within the district. No city block shall be divided in the formation of districts.

"Whenever possible without violating the foregoing principles:

"(a) the number of districts comprised of parts of more than one county or of parts of more than one town or city shall be as few as practicable;

"(b) towns and cities shall be divided in preference to counties;

"(c) more populous towns, cities and counties shall be divided in preference to less populous ones;

"(d) districts shall have the shortest practicable perimeters."

will be discussed below, a number of unexplained—and often suspicious—inconsistencies in method. When these unexplained departures from a general principle of adherence to county and town lines is coupled with the frank statement in the hearing before the three-judge court that political balance was a major objective of the districting (discussed in Part III of this brief), the departures from equality (more than 14 percent between the least and the most populous district) take on new and unpleasant significance.

The invalidity of New York's 1968 congressional districting act, when tested against the equal-population principle, is best understood by noting the several ways in which it fails to meet the test of rationality, particularly in view of the State's failure to offer constitutionally permissible explanations for the deviations.

1. The population deviations among the congressional districts in New York under the 1968 statute range from 6.6 per cent below the average congressional district population to 6.5 per cent above. The percentage spread from the least populous to the most populous district in the state is 53,603, more than 14 per cent. Moreover, the population differential even between *adjacent* districts is unaccountably large. For example, two adjacent districts in the western part of the State, the thirty-eighth and thirty-ninth, differ by 53,116. In the northern part of the State the thirty-first district is 40,499 larger than the adjacent thirty-second district. As will be noted below, in connection with the discussion of appellant's alternative plan, both of these substantial differentials could have been materially reduced without breaking the lines of any county not already divided between two or more districts. The State seeks to justify these inequalities in the interest of convenience because of the shortness of time involved for the redistricting (A. 116, 122). But this will scarcely do for a constitutional infirmity that was pointed out by the

three-judge district court on May 10, 1967, more than nine months before the legislature acted on February 26, 1968.

2. The State has sought to justify some population inequalities because of the desire to preserve the unity of political subdivisions, particularly counties and towns. But the rationale is suspect because of the many inconsistencies in its application. Political subdivision lines are sometimes observed and sometimes disregarded, all in response to a theme nowhere disclosed. Examples will illustrate the point.

a. Donald Zimmerman, counsel to the majority leader and temporary president of the New York Senate, testified to "a long history in this state of recognizing the integrity of county lines and town lines. There is no such history for city lines" (A. 124-25). To the extent that proposition has been followed in New York, it has been in connection with state legislative districting, not congressional districting. In any event, the 1968 plan does not satisfy the announced standard. In Suffolk County the Town of Islip was divided unnecessarily in the 1968 plan, which had not been done even in the 1961 plan. As demonstrated in appellant's suggested plan (Appendix F to this brief), the five congressional districts in Nassau and Suffolk Counties, at the eastern end of Long Island, could have been divided to preserve the unity of the Town of Islip while assuring compact districts free of any possible complaint of partisan gerrymander. As soon as a town is unnecessarily divided in conflict with the stated principles, justification is necessary; but here none is forthcoming.

The contention that city lines need not be preserved to the extent practicable is curious. Below the state level the city is the most important unit of government. A far larger number of citizens of the State of New York look to their cities for governmental service than to counties or towns. Moreover, witnesses for the State conceded that New York City was treated as an entity (properly, in the

judgment of appellant), even though it requires breaking county lines within the city.\*

Perhaps the State is reluctant to concede the significance of cities as political subdivisions because of its awareness of the way in which the 1968 act unnecessarily divides the cities of Lackawanna and Yonkers. The City of Lackawanna, just south of Buffalo, is divided in the 1968 act as part of a total arrangement in the western part of the State (identical in the 1961 act), including substantial population deviations among congressional districts 38 through 41. However, as demonstrated in appellant's alternative plan (not the suggested statewide plan submitted in 1966, but the alternative based on the 1968 statute), that same area could have been divided to assure almost precise equality of population while preserving the City of Lackawanna intact. If the Erie County towns of Concord, Collins, North Collins, Eden, Evans, and Brant, and the Cattaraugus Indian Reservation had been placed in the thirty-eighth district instead of the thirty-ninth, and if a few minor boundary adjustments had been made within the City of Buffalo, the population of the four districts could have been made almost exactly equal.\*\*

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\* In the 1968 plan Bronx and New York Counties are treated as a unit to produce nine congressional districts of nearly equal population, ranging from 4.5 to 4.6 per cent below the state average. Kings and Richmond Counties and a portion of Queens County are also treated as a unit to produce seven districts with population deviations about 1.9 per cent above norm. The rest of Queens County is treated as an entity with four districts, each about 6.2 per cent above the norm. Appellant does not quarrel with this treatment of New York City as a unit, but points out that greater equality could have been secured by treating Kings, Queens, and Richmond together, as noted in appellant's plan, appendix E. Appellant also objects to individual districts in New York City because of the gerrymandering there practiced, as described in part III of this brief.

\*\* The State may contend that the Erie County towns were not included in the thirty-eighth district because to do so would have meant crossing the boundary of Erie County. However, the Erie County boundary is already crossed by a congressional district line: the fortieth district includes Niagara County and a portion of Erie.



The City of Yonkers, located in Westchester County, is the sixth largest city in the State. In the 1961 plan Yonkers was kept as a unit, although the population disparity between the twenty-fifth and twenty-sixth congressional districts (Westchester and Putnam Counties) was substantial. The 1968 plan achieved near equality, but divided Yonkers between the two districts. Yet under appellant's plan, dividing Westchester County alone between two congressional districts, and locating Putnam County with counties to the north, Yonkers is retained as a unit; no other city or town is divided; and the population differential is less than 1,000.

Finally, the 1968 plan divides the City of Rochester almost down the middle, along the course of the Genesee River, including with each portion of the city a good swath of adjacent countryside. Perhaps it is only coincidence that the thirty-sixth and thirty-seventh congressional districts both send Republicans to Congress, while the City of Rochester has in recent years often voted for Democratic candidates.

b. The court below, in its opinion of May 10, 1967, holding the 1961 statute unconstitutional, stated that there were, under that statute, "districts where the transferral of a single county as a unit to an adjacent district would greatly lessen the present district disparity." 273 F. Supp. at 991. The 1968 plan presents comparable problems.

The most obvious example relates to Lewis County, in the north central part of the State. There is a difference of 40,499 between the populations of the adjacent thirty-first and thirty-second congressional districts. If, however, Lewis County had been included in the latter rather than the former district, the population difference would have been only 5,999. And if in addition Hamilton County had been shifted from the thirtieth to the thirty-first district, the population difference between the thirty-first and thirty-

second districts would have been reduced to 1,732.\* Comparison between the 1968 plan adopted by the legislature, and as modified by appellant's suggested shift of Lewis and Hamilton Counties, is indicated below:

	1968 Plan	<i>After shift of Lewis and Hamilton Counties</i>
30th congressional district	415,030	410,763
31st congressional district	425,905	406,923
32nd congressional district	385,406	408,655

Furthermore, if Rensselaer County, in east central New York, had been placed in the twenty-ninth district and Schenectady County in the thirtieth (instead of the reverse), the sizable deviation in population of the twenty-ninth district (4 per cent) could also have been substantially reduced, and at the same time a greater degree of compactness could have been achieved.

c. Witnesses for the State at the hearing before the three-judge court offered one additional reason to support some features of its otherwise puzzling plan: a desire to assure political balance, specifically, increased representation in Congress for the minority party. In light of that candid admission (a matter discussed in Part III of this brief), the districting pattern emerges with greater clarity. Seeming inconsistencies in rationale become understandable, and the "bizarre" shape and lack of compactness of the districts are seen to serve a purpose. The population deviations now emerge as part of that larger design. Unfortunately, the arrangement of election districts to suit partisan ends, however benign, is "constitutionally impermissible."

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\* The State's assertion that "Blue-Line" counties should not be separated (A. 129-31) is an argument of momentary convenience only. In the state legislature, where homogeneity might make more sense, the "Blue Line" has often been disregarded.

In testing the constitutionality of the 1968 New York act, the answer must come primarily from examination of that act in its local context, the point to which this brief is primarily directed. Indeed, this was the advice given in *Reynolds*, when this Court stated:

What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. 377 U.S. at 578.

When the test is as indefinite as "substantial population equality," it is particularly true that the experience in other states, while relevant, should not necessarily be viewed as controlling. It is, however, helpful to remember that most states have been able to satisfy a more exacting standard of population equality than New York. Of the states that report less favorable equality ratios than New York (see chart in Appendix C), only five have received judicial approval since the 1964 decision in *Wesberry*: California: *Silver v. Reagan*, 64 Cal. Rptr. 325, 434 P.2d 621; Illinois: *People ex rel. Scott v. Kerner*, 33 Ill. 2d 460, 211 N.E.2d 736; Kansas: *Meeks v. Avery*, 251 F. Supp. 245 (D. Kan.); Nebraska: *Exon v. Tiemann*, 279 F. Supp. 609 (D. Neb.); New Hampshire: *Levitt v. Maynard*, 107 N.H. 38, 216 A.2d 778. But three of those decisions, from Illinois, Kansas, and New Hampshire, predated this Court's 1967 ruling in *Swann v. Adams*, 383 U.S. 440, 444, requiring state justification of population deviations that are more than *de minimis*.

The California decision involved a plan with a population spread of 54,218 from the most populous to the least populous district (compared with 53,603 in New York), but a percentage deviation of only 11 per cent (compared

with 14 per cent in New York). The decision was *per curiam* without statement of reasons or citation of authority.

The Nebraska decision involved a plan with a population spread of 92,443 according to the 1960 census. Whether rightly or wrongly, the federal district court disregarded the 1960 census figures and relied instead on population projections of 1966 (from the University of Nebraska) and 1967 (from the Legislative Research Bureau) which showed the three congressional districts in Nebraska to be very close in terms of population under the plan. Accordingly, the court viewed the differential as 17,678, and treated it as a *de minimis* variation. Moreover, unlike the present case, plaintiff explicitly disclaimed any charge of gerrymandering. *Exon v. Tiemann*, 279 F. Supp. 609, 611. The Kansas case, *Meeks v. Avery*, 251 F. Supp. 245, was similar in that the court accepted population projections from a state census that showed a population spread of only 15,060, compared to the 65,007 shown by the 1960 federal census.

On the other hand, the cases set for argument with the present appeal, *Kirkpatrick v. Preisler* (No. 30) and *Heinkel v. Preisler* (No. 31), come to this Court as appeals from the decision of a three-judge court that the 1967 Missouri congressional districting statute was invalid because of a population differential of only 23,285, amounting to 5.5 per cent from the least populous to the most populous district.

This examination of other cases is not, however, particularly revealing except of the proposition that questions of "substantial population equality" require careful examination of the relevant facts of each case.



- B. The 1968 New York act should be invalidated because appellant has demonstrated alternative proposals that would have reduced population inequalities while improving the consistency of the districting and making the districts more compact.**

In *Swann v. Adams*, 385 U.S. 440, 445, this Court commented on the significance of alternative plans:

it seems quite obvious that the State could have come much closer to providing districts of equal population than it did. The appellants themselves placed before the court their own plans which revealed much smaller variations between the districts than did the plan approved by the District Court. Furthermore, appellants suggested to the District Court specific amendments to the legislative plan which, if they had been accepted, would have measurably reduced the population differences between many of the districts.

Lower federal courts and state courts, both before and after *Swann*, have applied the same practical test, review of suggested alternative plans, as a means of testing compliance with the equal-population principle. See, for example, *Baker v. Clement*, 247 F. Supp. 886 (M.D. Tenn.), *Koziol v. Burkhardt*, 51 N.J. 412, 241 A.2d 451; *Jones v. Falcey*, 48 N.J. 25, 222 A.2d 101. In *Koziol v. Burkhardt*, 51 N.J. at —, 241 A.2d at 453, the New Jersey Supreme Court expressed the point in these words:

In holding that the Legislature was required to adopt the plan which attained the least disparity while preserving the legislative thesis of respecting municipal lines, the trial court correctly applied *Jones v. Falcey* . . . .

Appellant does not contend that his suggested plan is the only, or even the best, way of reducing population inequalities among New York's congressional districts. Indeed, appellant has suggested in section A above several modifications in the statutory plan that would preserve its general pattern while sharply reducing the inequalities of the plan. Appellant's suggested plan has been available to the representatives of the State and to the court below since the original complaint was filed in this case (in June of 1966 as an appendix to the complaint). Appellant necessarily concludes that the State has failed to "make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. at 577.

C. Compactness and contiguity are aspects of equality "as nearly as is practicable."

In *Reynolds v. Sims*, 377 U.S. 533, 568, this Court held that the Alabama legislative apportionment at issue "presented little more than crazy quilts, completely lacking in rationality, and could be found invalid on that basis alone." Cf. *Baker v. Carr*, 369 U.S. 186, 254 (Mr. Justice Clark, concurring). While these cases involved state legislative districts, the same point applies to congressional districts, probably *a fortiori*. Thus, in *Drum v. Seawell*, 250 F. Supp. 922, 925 (M.D.N.C.), *aff'd*, 383 U.S. 831, the three-judge court made a similar point in these words:

The tortuous lines which delineate the boundaries of many of the congressional districts under the proposed plan, the resulting lack of compactness and contiguity, and the failure to achieve equal representation for equal numbers of people as nearly as is practicable compels us to hold that the congressional apportionment is constitutionally invalid.

The reasons for the lack of compactness in the present congressional districts in New York State are explored in more detail in part III of this brief. Here no more

is necessary than to apply a visual test, noting, for example, the interlocking embrace of the sixth and eighth districts in Queens County and the one-county deep, two-hundred-mile-long reach of the thirty-fifth district, stretching across almost two-thirds the length of the State. Witnesses for the State have contended that the district is congruent with the Mohawk Valley. But half of the eight counties in the district are not remotely part of the Mohawk Valley.

### III.

Gerrymandering violates Article I, Section 2 of the Constitution and the Fourteenth Amendment.

Once the equal-population principle is accepted as the basic postulate for legislative apportionment and congressional districting, the hardest remaining intellectual and constitutional problem is to determine how to identify and how to eliminate the discrimination caused by gerrymandering.\* It is perfectly apparent that the salutary effect of the equal-population principle can be seriously undercut if no restriction is imposed upon the way in which equality of population among election districts is achieved. Population equality cannot by itself assure fairness of the districting process.

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\* Appellee's motion to affirm filed in this Court in response to the appellant's jurisdictional statement suggests at pages 11-12 that the claim of gerrymandering is not a justiciable issue, citing *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916, 925-26 (S.D.N.Y.), *aff'd*, 382 U.S. 4; *Badgley v. Hare*, 377 Mich. 396, 140 N.W.2d 436, *appeal dismissed for want of a substantial federal question*, 385 U.S. 114; *Bush v. Martin*, 251 F. Supp. 484, 513 (S.D. Tex.); *Sincock v. Gately*, 262 F. Supp. 739, 831-33; *Jones v. Falcey*, 48 N.J. 25, 222 A.2d 101, 105. This, however, overreads the meaning of the *per curiam* affirmance in *WMCA* and the dismissal in *Badgley* by this Court. In other cases in this Court, discussed below, although the merits of the gerrymander were not reached, the opinions were certainly premised on the assumption that the issue was federal judicial business. See *Wright v. Rockefeller*, 376 U.S. 52; *Fortson v. Dorsey*, 379 U.S. 433; *Burns v. Richardson*, 384 U.S. 73. Cf. *Gomillion v. Lightfoot*, 364 U.S. 339.

Appellant's argument on this point will proceed as follows. After a definition of gerrymandering the constitutional argument will be analyzed. Next will come a discussion of the nature of the proof needed to demonstrate the existence of a forbidden gerrymander, and finally the application of these principles to the present appeal.

- A. Gerrymandering is the device by which election districts are constructed to enlarge or diminish the voting strength of a political party or group identified in common by race, ethnic background, or some other socioeconomic grouping of interest.

To define gerrymandering, even in such neutral terms as above, is to reveal that it is antithetical to a system of representative government. It should accordingly be possible to reach a consensus on the proposition that, apart from malapportionment itself (which is a kind of population gerrymander), the gerrymander is the device currently most destructive of fairness in the electoral process. Nor are malapportionment and gerrymandering unrelated. Even though the equal-population principle does not of its own force forbid gerrymandering, malapportionment and gerrymandering are nonetheless of the same family. Both arise out of the instinct for partisan advantage in defiance of the democratic ideal.

The techniques of gerrymandering are well understood. Whether the purpose is discrimination against or in favor of a political party or members of any other identifiable group, the methods are those described by Andrew Hacker in his study, *Congressional Districting*, 55 (rev. ed. 1964):

If the aim of gerrymandering is for one party to obtain the maximum voting advantage at the other's expense, there are several methods by which this can be done. In each, the gerrymandering party



(henceforward to be called Party A) intends to make the votes of the opposition (Party B) as ineffective as possible. One method is for Party A to set up a district in which Party B will have "excess" votes—that is, considerably more votes will be cast for Party B's candidate than he needs to win. A second method is to create a district where Party B's "wasted" votes—those cast for a predictable loser—will be increased. And the third [now forbidden by the equal-population principle] is to design a district so that Party A's "effective" votes will be increased—usually by putting its own known followers into small districts compared to much larger districts for Party B's known followers.

**B. Article I, Section 2 of the Constitution and the Fourteenth Amendment forbid gerrymandering.**

This Court has rejected "[r]acially based gerrymandering," at least when it results "in denying to some citizens their right to vote . . . ." *Reynolds v. Sims*, 377 U.S. at 555, citing *Gomillion v. Lightfoot*, 364 U.S. 339. Although that case was regarded by a majority of this Court as a Fifteenth Amendment case because of the complete denial of voting rights on grounds of race, it is not logical that intentional and systematic dilution of voting rights by reason of race should be any more permissible than dilution of voting rights "based solely on geographical considerations." *Reynolds v. Sims*, 377 U.S. at 580. Similarly, since "neither history alone, nor economics or other sorts of group interests" (*id.* at 579-80) are permissible bases for the limitation of voting rights, it follows that gerrymandering for any of these purposes is likewise forbidden.

Nevertheless, the State asserts, as it must if it is to defend the present congressional districting act, that partisan preferment is permissible. (For details of the State's argument, see section D below.) The argument appears to

be that the power should be given to the line drawers of the State to determine the allocation of congressional seats to each party. The State's announced purpose seems benign, to assure minority party representation; but even if this were constitutionally permissible under an even-handed administration, which appellant denies, no way is suggested of checking on those who wield this vast authority. If both houses of a state legislature are controlled by a single party, which has usually been the case in New York as in most other states, the suggested rule would impose no restraint upon the dominant party except the uncertain recourse of appeal to the voters, a majority of whom would presumably be of the same political affiliation as the controlling legislative majority. It simply won't do.

It is scarcely more acceptable to argue that, because control of the New York Legislature was divided when the 1968 statute was enacted, each house provides a sufficient check upon the other to prevent egregious abuse by either. Even if that should be so, the more likely result, which appellant contends in Section D below was the case in New York, the likelihood of a bipartisan agreement is increased, whereby each party is assured its "safe" districts in exchange for like assurance in return. But what of the voters thus deprived of an opportunity to make their votes count in any meaningful way after the result is cynically prearranged by legislative leaders who in this respect serve their own advantage before that of the public?

It is no answer to say that voters who voted for a losing candidate in any election are to that extent always unrepresented. The difference is that where the result of election contests is predetermined by legislative agreement, bipartisan or otherwise, the decision-making authority is wrested from the voters in arbitrary and invidious fashion.

Surely the partisan gerrymander cannot be held constitutional; it violates the equal protection clause in creating

arbitrary classifications for the exercise of the franchise. Similarly, to the extent that fair and equal representation is the meaning of Article I, Section 2's provision for election of Representatives "by the People of the several States," the same principle should flow from that clause as well. Accordingly, congressional districting, like other forms of legislative election districting, must be freed of the burden of the gerrymander, whether used for partisan, racial, ethnic, or socioeconomic purposes.

- C. The forbidden gerrymander is established upon a showing of district line drawing that systematically discriminates against or in favor of any group identified by interests shared in common.

The hard question is to determine how much proof, and what kind of proof, is necessary to establish a forbidden gerrymander. To date no case has been presented to this Court in which sufficient proof of gerrymandering was offered to persuade the Court that it was actionable. But there is no indication of unwillingness to act in a proper case.

This Court has expressed its views on the proof necessary to establish a vote-diluting gerrymander, as opposed to a vote-denying gerrymander in only one case in which there was a written opinion, *Wright v. Rockefeller*, 376 U.S. 52. In *Fortson v. Dorsey*, 379 U.S. 433, and *Burns v. Richardson*, 384 U.S. 73, gerrymandering was inferentially condemned, but in none of these cases was the constitutional question reached.

*Wright v. Rockefeller* did not directly raise the issue of gerrymandering for partisan advantage. Plaintiffs in that case had alleged that New York's 1961 congressional districting statute "segregates eligible voters by race and place of origin" in New York County. 376 U.S. at 53. The complaint alleged:

The 18th, 19th and 20th Congressional Districts have been drawn so as to include the overwhelming number of nonwhite citizens and citizens of Puerto Rican origin in the County of New York. *Id.* at 54.

The case was tried before a three-judge court whose members read the evidence in as many ways, although two voted to dismiss the complaint. *Wright v. Rockefeller*, 221 F. Supp. 460 (S.D.N.Y.). Judge Moore concluded that there was no proof that the boundaries were drawn on racial lines. Judge Feinberg, believing the case closer, stated that plaintiffs' evidence might justify an inference that racial considerations motivated the reapportionment, but concluded that plaintiffs had not met the requisite burden of proof. Judge Murphy, dissenting, concluded that the statistical evidence demonstrated that Negroes and Puerto Ricans were fenced out of the seventeenth district, thus establishing a *prima facie* case of legislative intent to discriminate on racial lines.

This Court affirmed the dismissal because "appellants have not shown that the challenged part of the New York Act was the product of a state contrivance to segregate on the basis of race or place of origin." *Id.* at 58. Mr. Justice Harlan concurred on the explicit premise that "the only issue in this case involves racially segregated districts." *Ibid.* Justices Douglas and Goldberg, dissenting, also believed that the charge of racial gerrymandering was established.

The inference from *Wright* (and *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D.N.Y.), *aff'd*, 376 U.S. 222) is that racial gerrymandering will be invalidated upon sufficient proof. There was also in *Wright* an incipient issue of partisan gerrymandering, based on the same facts; but plaintiffs did not push the claim. In that case an argument could have been made that the irregularities in



the district boundaries were designed primarily for political advantage rather than essentially to achieve racially discriminatory objectives. In light of the well-known patterns of residential segregation in Manhattan, it could have been argued that political advantage was sought in one of two ways: (1) It might have been contended that, by concentrating Negro and Puerto Rican voters in one district, the aim was to assure at least one Representative from one of those racial or national-origin groups; or (2) it might have been a straight partisan gerrymander, in which the lines were drawn to exclude Negroes and Puerto Ricans from one district and to concentrate them in another on the assumption that, as a class, they were more likely to vote for one party than another. This would square exactly with the classic theory of gerrymander in terms of "excess" votes and "wasted" votes, as described above at pages 29-30.

In *Fortson v. Dorsey*, 379 U.S. 433, this Court suggested that, with sufficient proof of discrimination, a gerrymander could be invalidated. The issue in that case related to the validity on its face of a Georgia statute providing for multi-member constituencies in the state's seven most populous counties. In concluding that the statute was not invalid on its face this Court observed that a comparable provision "under the circumstances of a particular case, [might] operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Id.* at 439. Upon such a demonstration it was said to be "time enough to consider whether the system still passes constitutional muster." *Ibid.* See also *Burns v. Richardson*, 384 U.S. 73, 88. Cf. *Connor v. Johnson*, 265 F. Supp. 492 (S.D. Miss.), *aff'd*, 386 U.S. 483, in which a claim of racial gerrymandering in the congressional districting in Mississippi was held not established on the record.

The question is accordingly yet unanswered: What proof is needed to secure the only answer to the constitutional question that appellant thinks possible? The problem may lie in the fact that two presumptions are likely to collide in such cases. On the one hand is the presumption of constitutional validity that undergirds all state legislative acts. On the other hand is the requirement that has now been made plain in these cases that the burden rests on the State to explain population deviations that are more than *de minimis*. In these cases, where the issue involves the integrity of the franchise, which is "a fundamental political right, because preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370, the ordinary presumption of validity must yield to the State's obligation to explain.

**D. The circumstances surrounding the 1968 New York congressional districting act show a systematic and intentional partisan gerrymander.**

Appellant believes that the present appeal is exactly the kind of case discussed above, that is, one in which rational justification is lacking as to the range of population deviations among the districts (more than 14 per cent from least populous to most populous), and the individual deviations that could have been cured but were not. The State's principal justification is worse than none, for it confirms what otherwise was inferable, but not explicitly on the record, namely, balancing of political representation in the House of Representatives.

The issue of partisan gerrymandering is sharply drawn, appellant thinks inescapably so, in the present case. Even apart from the unexplained or ill-explained population inequalities, the fact of the political gerrymander is insisted upon by the State's own witnesses who parade the political motivation behind the line drawing and defend its validity. Here are several items from the hearing before the three-judge court below. The speaker is the State's witness,

Donald Zimmerman, then counsel to the majority leader and temporary president of the New York State Senate:

The fact is, your Honors, as you well know, every line drawn on a map has political impact, and the only person who can say that he is drawing a line and he doesn't know what the political impact of his line is is, of course, an idiot (A. 120).

It is in the essence of the very nature of a districting and reapportionment plan to ascribe and to segregate and apportion political power. This is the heart of it (A. 120).

So that the Legislature had before it the rational policy of making the districts in Queens County representative, and introducing an element of proportionality in the formation of the districts . . . . (A. 122-23).

. . . . There is no reason why in a county which will have four Congressmen the Legislature cannot apportion in a manner so as to give some recognition—some, not even proportional, mind you, but some recognition to a minority which captures 43 per cent of the vote (A. 123).

. . . . It is a rational policy for a state in a multi-district county to design the districts so as to provide the minority with some representation. I am prepared to stand on that in this court or in any other court (A. 123).

The examples given by Mr. Zimmerman, a Republican, are illuminating. He worries at some length about the need to preserve three Republican congressional districts in New York City (why not two or four?), but appears to

be unconcerned by the fact that the City of Rochester and its environs are represented by two Republicans instead of one Republican and one Democrat, as would probably have been the case if Rochester had been left as a unit instead of divided down the middle.

The clearly political motivations which determined the placement of the boundary line between the sixth and eighth congressional districts in Queens County are strikingly revealed by the figures below.

Under the redistricting statute of February 1968 the boundary between these two districts remained unaltered from what it had been under the 1961 statute (although the districts were altered in 1968 as they touched other districts). Therefore, the figures used below relate to election figures from the year 1960—the last election prior to the 1961 redistricting.

The sixth congressional district is strongly Republican; the eighth is overwhelmingly Democratic. Explanation of the peculiarly corrugated line which separates these two districts reveals that the boundary does not follow any "natural" or logical route whatsoever. The motivations which determined the boundary become readily apparent, however, when one examines the political character of the areas immediately adjacent to the boundary line: the boundary was clearly located where it was in order to take advantage of the sharp contrast in the political pattern on one side of the line as against that on the other.

In compiling the figures below, only those of the 1960 election districts which touch the present congressional district boundary line and which are now located wholly within one congressional district or the other were included. Those few election districts which are divided by the present congressional district boundary were excluded because no election results on any basis smaller than election districts exist. (Election districts in New York City generally consist of one or a few city blocks.)



The figures are as follows:

In those election districts which are within the present sixth congressional district and are located directly along the boundary of the present eighth congressional district, Republican candidates polled 59.5 per cent of the votes in 1960; Democratic candidates won 40.5 per cent. By contrast, just across the line in those election districts now within the eighth congressional district which directly touch the boundary of the present sixth district, the Republican percentage was 43.3 and the Democratic was 56.7. There was thus a difference of fully 16.2 percentage points between areas separated only by the width of a street.

It should be noted that these figures relate only to the border areas of the two districts. The contrast is even greater for the districts as a whole, but it is the contrast along the boundary line which is particularly revealing, for it provides unmistakable evidence of the fact that the line was located in such a way as to take maximum advantage of as many points as possible in eastern Queens where a sharp difference in the voting pattern existed between directly adjacent areas.

If political balance is genuinely sought in legislative representation, the state should be urged to adopt a system of proportional representation, which is still available to those who favor "proportionality" as Mr. Zimmerman describes it. But it is quite another thing to allow a politically chosen body, whether a legislature or its appointed reapportionment commission, to make decisions for the voters as to how they shall be combined into election districts in order to prepackage the results as far as possible. If this is the low repair to which the election process has fallen, it is due for a change.

The discrimination against the voters left indefinitely without chance of an effective ballot is apparent and cries out for remedy in terms of equality restored and fairness regained in the representation scheme. Appellant believes this aspect of the present appeal, even without the strong support given his claim by the unexplained inequalities, justifies reversal of the judgment below to forbid further use of the present plan.

### CONCLUSION

For the reasons stated above the judgment of the court below should be reversed and the case remanded to the district court with a direction to enjoin further use of the 1968 congressional districting act of the State of New York, and to ask that jurisdiction be there retained until a valid statute has been enacted.

Respectfully submitted,

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The discrimination against the voters of Indiana is  
without excuse of an official character is apparent and clear  
out for respect in terms of equality of treatment and fairness  
in the representation of the people. The Indiana voters  
this respect of the present plan, even without the strong  
arguments given, is shown by the unexplained inequalities  
in the treatment of the Indiana voters below to forbid further  
use of the present plan - which is a violation of the  
Constitution of the United States.

### CONCLUSION

The Indiana voters state that the treatment of the voters  
should be revised and the case referred to the  
court with a view to equal treatment of the  
voters of the State of New  
York and that provision be made for the  
voters of the State of New York.

Respectfully submitted,

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Attorney for Plaintiff

# Appendix A

## Population of New York Congressional Districts (1968) and Percentage Deviations From Average

1st C.D.	393,585	-3.8
2nd C.D.	393,465	-3.9
3rd C.D.	393,434	-3.9
4th C.D.	393,183	-3.9
5th C.D.	393,288	-3.9
6th C.D.	434,615	+6.2
7th C.D.	434,750	+6.2
8th C.D.	434,552	+6.2
9th C.D.	434,770	+6.2
10th C.D.	417,122	+1.9
11th C.D.	417,090	+1.9
12th C.D.	417,298	+1.9
13th C.D.	417,040	+1.9
14th C.D.	417,080	+1.9
15th C.D.	417,093	+1.9
16th C.D.	417,478	+2.0
17th C.D.	390,742	-4.5
18th C.D.	390,861	-4.5
19th C.D.	390,023	-4.7
20th C.D.	390,363	-4.6
21st C.D.	390,552	-4.6
22nd C.D.	390,492	-4.6



23rd C.D.	390,228	-4.7
24th C.D.	390,057	-4.7
25th C.D.	420,146	+2.6
26th C.D.	420,467	+2.7
27th C.D.	400,349	—
28th C.D.	396,122	-3.2
29th C.D.	425,822	+4.0
30th C.D.	415,030	+1.4
31st C.D.	425,905	+4.1
32nd C.D.	385,406	-5.8
33rd C.D.	415,333	+1.5
34th C.D.	423,028	+3.3
35th C.D.	386,148	-5.7
36th C.D.	410,943	+ .4
37th C.D.	410,432	+ .3
38th C.D.	382,277	-6.6
39th C.D.	435,393	+6.4
40th C.D.	435,684	+6.4
41st C.D.	435,880	+6.5

maximum deviation: 6.6%

average deviation: 3.8%

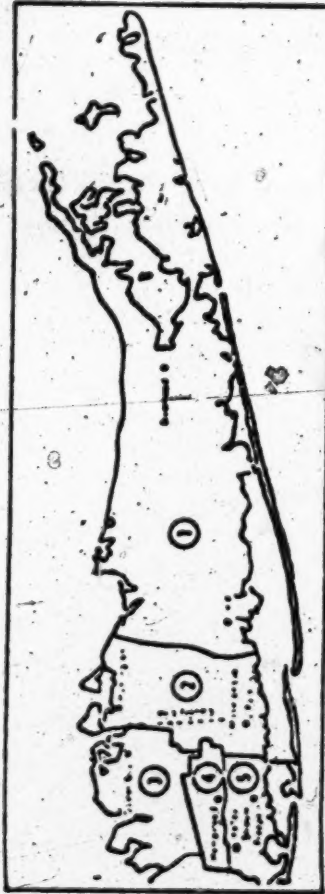
smallest to largest: 14.0%

100-100-100-100

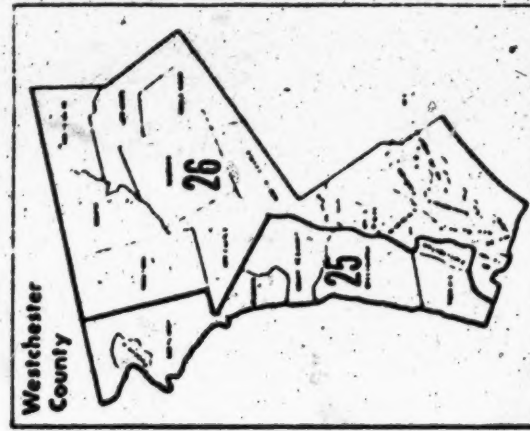
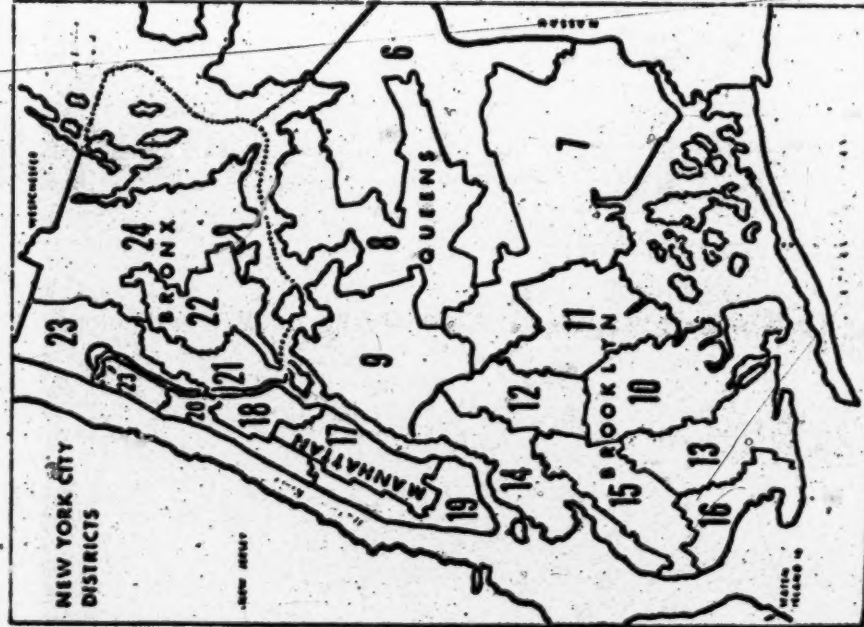
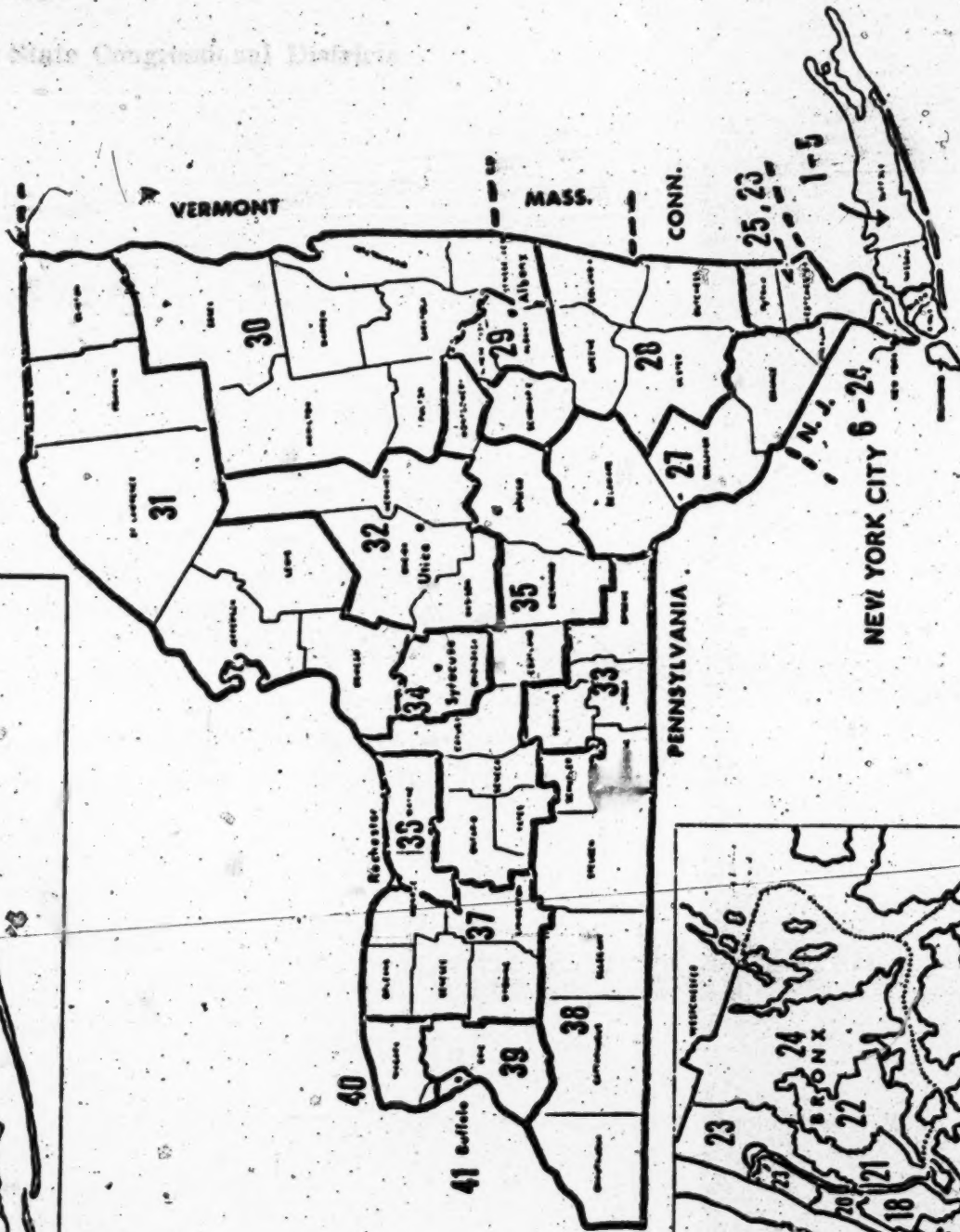


100-100-100-100

# New Congressional Districts



Long Island



**Appendix C**

**Population Disparities Among Congressional Districts,  
by States, as of Late April, 1968**

**(Photoprint)**

***[For the convenience of Court and Counsel this  
Exhibit is bound in on the opposite page.]***



**POPULATION DISPARITIES AMONG CONGRESSIONAL  
DISTRICTS, BY STATES, AS OF LATE APRIL, 1968**

STATE	MAXIMUM PERCENT- AGE VARI- ATION FROM STATE'S AVERAGE DISTRICT POPULA- TION	AVERAGE PERCENT- AGE VARI- ATION FROM STATE AVERAGE	PERCENTAGE BY WHICH POPULATION OF MOST POPULOUS DISTRICT EXCEEDS THAT OF LEAST POPULOUS	POPULATION DIFFERENCE BETWEEN MOST- AND LEAST- POPULOUS DISTRICTS	RATIO BETWEEN POPULA- TIONS OF MOST- AND LEAST- POPULOUS DISTRICTS
West Virginia*	1.0%	.6%	1.9%	6,970	1.0 to 1
Massachusetts*	1.1%	.5%	2.1%	8,717	1.0 to 1
Ohio*	1.4%	.7%	2.4%	9,881	1.0 to 1
Maryland*	1.5%	.6%	2.6%	9,973	1.0 to 1
Utah*	1.5%	1.5%	3.0%	13,101	1.0 to 1
Indiana*	1.6%	.7%	2.6%	11,039	1.0 to 1
Arkansas*	1.6%	.8%	2.2%	9,675	1.0 to 1
North Carolina*	2.0%	1.1%	4.1%	16,636	1.0 to 1
Michigan*	2.1%	1.1%	3.4%	13,789	1.0 to 1
Oklahoma*	2.1%	1.9%	4.1%	15,457	1.0 to 1
Tennessee*	2.2%	1.2%	4.3%	16,728	1.0 to 1
Missouri*	2.4%	1.4%	4.4%	18,487	1.0 to 1
Montana*	3.1%	3.1%	6.3%	20,635	1.1 to 1
Mississippi*	3.2%	2.5%	7.1%	26,265	1.1 to 1
Wisconsin	3.4%	1.5%	7.0%	26,847	1.1 to 1
South Dakota*	3.4%	3.4%	7.1%	23,288	1.1 to 1
Maine	4.3%	4.3%	9.0%	41,665	1.1 to 1

STATE	MAXIMUM PERCENT- AGE VARI- ATION FROM STATE'S AVERAGE DISTRICT POPULA- TION	AVERAGE PERCENT- AGE VARI- ATION FROM STATE AVERAGE	PERCENTAGE BY WHICH POPULATION OF MOST POPULOUS DISTRICT EXCEEDS THAT OF LEAST POPULOUS	POPULATION DIFFERENCE BETWEEN MOST- AND LEAST- POPULOUS DISTRICTS	RATIO BETWEEN POPULA- TIONS OF MOST- AND LEAST- POPULOUS DISTRICTS
West Virginia*	1.0%	.6%	1.9%	6,970	1.0 to 1
Massachusetts*	1.1%	.5%	2.1%	8,717	1.0 to 1
Ohio*	1.4%	.7%	2.4%	9,881	1.0 to 1
Maryland*	1.5%	.6%	2.6%	9,973	1.0 to 1
Utah*	1.5%	1.5%	3.0%	13,101	1.0 to 1
Indiana*	1.6%	.7%	2.6%	11,039	1.0 to 1
Arkansas*	1.6%	.8%	2.2%	9,675	1.0 to 1
North Carolina*	2.0%	1.1%	4.1%	16,636	1.0 to 1
Michigan*	2.1%	1.1%	3.4%	13,789	1.0 to 1
Oklahoma*	2.1%	1.9%	4.1%	15,457	1.0 to 1
Tennessee*	2.2%	1.2%	4.3%	16,728	1.0 to 1
Missouri*	2.4%	1.4%	4.4%	18,487	1.0 to 1
Montana*	3.1%	3.1%	6.3%	20,635	1.1 to 1
Mississippi*	3.2%	2.5%	7.1%	26,265	1.1 to 1
Wisconsin	3.4%	1.5%	7.0%	26,847	1.1 to 1
South Dakota*	3.4%	3.4%	7.1%	23,288	1.1 to 1
Maine	4.3%	4.3%	9.0%	41,665	1.1 to 1
New Mexico* (a)	5.3%	5.3%	11.3%	50,695	1.1 to 1
North Dakota	5.4%	5.4%	11.4%	34,134	1.1 to 1
Kentucky*	5.5%	2.5%	7.0%	40,144	1.1 to 1
Virginia*	5.8%	3.3%	11.2%	42,131	1.1 to 1
South Carolina*	6.1%	3.7%	12.2%	45,922	1.1 to 1
New York*	6.6%	3.8%	14.0%	53,603	1.1 to 1
Arizona*	6.6%	4.4%	12.7%	51,312	1.1 to 1
Rhode Island	6.9%	6.9%	14.7%	58,990	1.1 to 1
New Jersey*	7.3%	3.3%	15.5%	57,978	1.2 to 1
Illinois	7.5%	3.4%	14.5%	57,056	1.1 to 1
California*	8.1%	3.2%	11.3%	54,218	1.1 to 1
Texas*	8.1%	3.8%	16.1%	62,559	1.2 to 1
Alabama*	8.4%	4.4%	15.4%	59,136	1.2 to 1
Oregon*	8.6%	4.3%	16.0%	64,644	1.2 to 1
Florida*	8.8%	2.4%	12.2%	48,824	1.1 to 1
New Hampshire	9.3%	9.3%	20.6%	56,715	1.2 to 1
Idaho*	9.4%	9.4%	20.8%	62,777	1.2 to 1
Kansas*	9.6%	3.9%	15.2%	59,792	1.2 to 1
Nebraska*	11.8%	7.9%	22.3%	92,443	1.2 to 1
Iowa	12.3%	5.2%	25.3%	89,250	1.3 to 1
Colorado*	12.6%	6.4%	21.7%	87,988	1.2 to 1
Minnesota	13.2%	8.0%	28.6%	107,397	1.3 to 1
Washington*	13.3%	(b)	26.0%	91,709	1.3 to 1
Louisiana*	13.7%	7.8%	25.0%	92,622	1.3 to 1
Connecticut*	14.1%	4.7%	19.3%	77,934	1.2 to 1
Pennsylvania*	15.0%	5.2%	34.0%	125,470	1.3 to 1
Georgia*	16.4%	9.8%	38.2%	125,837	1.4 to 1

OTHER STATES: Alaska, Delaware, Nevada, Vermont and Wyoming have only one Representative each, elected on a state-wide basis; Hawaii has two Representatives both of whom are elected on a state-wide basis, but will be required to establish separate districts by 1970.

#### NOTES:

\* - Asterisks indicate states which have been districted or redistricted since Wesberry v. Sanders decision of February 17, 1964. (Total to date: 37 states.)

(b) - Information not yet available.

**Appendix D****(Photoprint)**

***[For the convenience of Court and Counsel this  
Exhibit is bound in on the opposite page.]***



# APPENDIX D

A POSSIBLE ARRANGEMENT OF NEW YORK  
STATE CONGRESSIONAL DISTRICTS UNDER  
WHICH NO DISTRICT WOULD DEVIATE IN  
POPULATION BY MORE THAN 4.7% FROM  
STATE AVERAGE

## UNDER THIS PLAN

## UNDER 1968 ACT

MOST POPULOUS DISTRICT:  
DEVIATION FROM STATE AVERAGE:

423,687  
+3.5%

6 435,880  
+6.5%

LEAST POPULOUS DISTRICT:  
DEVIATION FROM STATE AVERAGE:

390,204  
-4.7%

382,277  
-6.6%

AVERAGE VARIATION FROM STATE AVERAGE:  
PERCENTAGE DEVIATION FROM SMALLEST  
TO LARGEST

3.0%  
8.6%

3.8%  
14.0%

POPULATION DIFFERENCE BETWEEN MOST  
AND LEAST POPULOUS DISTRICTS:

33,483

53,603

MINIMUM PERCENTAGE OF STATE POPULATION  
WHICH CAN BE REPRESENTED BY  
MAJORITY OF CONGRESSIONAL DISTRICT:

49.8%

48.3%

DELETED



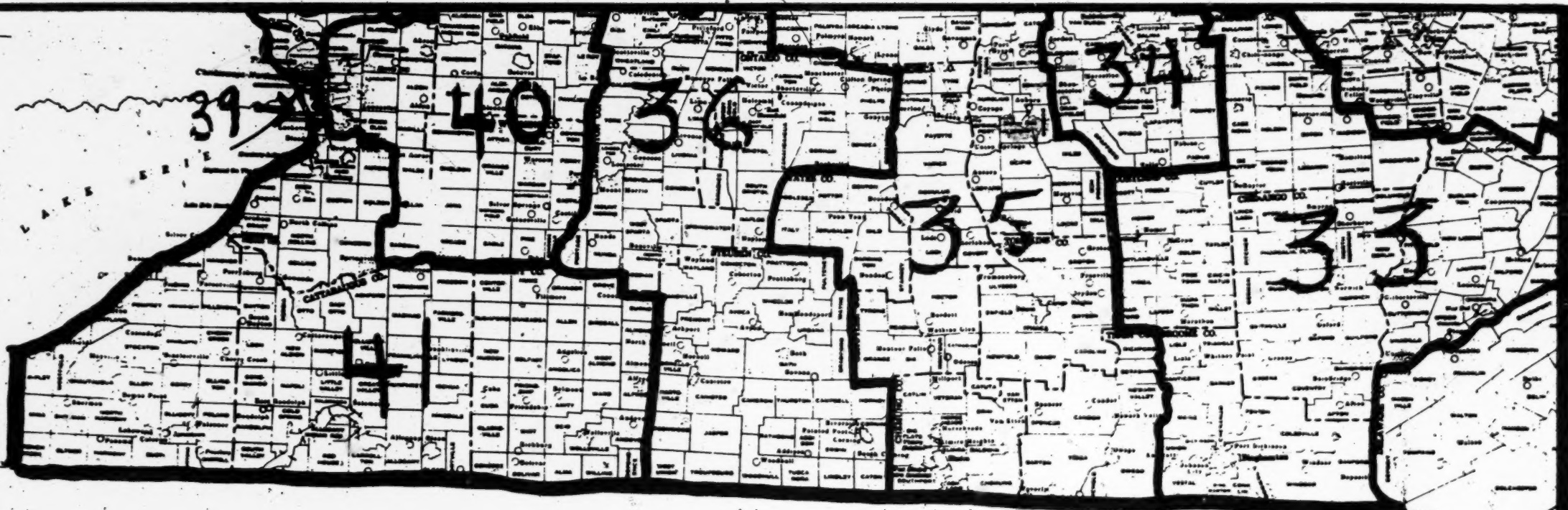
# APPENDIX D

A POSSIBLE ARRANGEMENT OF NEW YORK  
STATE CONGRESSIONAL DISTRICTS UNDER  
WHICH NO DISTRICT WOULD DEVIATE IN  
POPULATION BY MORE THAN 4.7% FROM  
STATE AVERAGE

	UNDER THIS PLAN	UNDER 1968 ACT
MOST POPULOUS DISTRICT: DEVIATION FROM STATE AVERAGE:	423,687 +3.5%	435,880 +6.5%
LEAST POPULOUS DISTRICT: DEVIATION FROM STATE AVERAGE:	390,204 -4.7%	382,277 -6.6%
AVERAGE VARIATION FROM STATE AVERAGE: PERCENTAGE DEVIATION FROM SMALLEST TO LARGEST	3.0% 8.6%	3.8% 14.0%
POPULATION DIFFERENCE BETWEEN MOST AND LEAST POPULOUS DISTRICTS:	33,483	53,603
MINIMUM PERCENTAGE OF STATE POPULATION WHICH CAN BE REPRESENTED BY MAJORITY OF CONGRESSIONAL DISTRICT- DELEGATION:	49.8%	49.3%

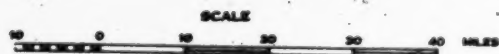
## Congressional District

Congressional District	Population	Area
1 C.D.	398,254	
2nd C.D.	392,518	
3rd C.D.	391,986	
4th C.D.	391,377	
5th C.D.	392,820	
6th C.D.	423,525	
7th C.D.	423,610	
8th C.D.	423,539	
9th C.D.	423,553	
10th C.D.	423,467	
11th C.D.	423,557	
12th C.D.	423,398	
13th C.D.	423,687	
14th C.D.	423,541	
15th C.D.	423,529	
16th C.D.	423,482	
17th C.D.	390,432	
18th C.D.	390,338	
19th C.D.	390,204	
20th C.D.	390,400	



# NASSAU COUNTY

1. Arden	11. Hempstead Harbor	21. Hempstead Harbor
2. Arden	12. Hempstead Harbor	22. Hempstead Harbor
3. Arden	13. Hempstead Harbor	23. Hempstead Harbor
4. Arden	14. Hempstead Harbor	24. Hempstead Harbor
5. Arden	15. Hempstead Harbor	25. Hempstead Harbor
6. Arden	16. Hempstead Harbor	26. Hempstead Harbor
7. Arden	17. Hempstead Harbor	27. Hempstead Harbor
8. Arden	18. Hempstead Harbor	28. Hempstead Harbor
9. Arden	19. Hempstead Harbor	29. Hempstead Harbor
10. Arden	20. Hempstead Harbor	30. Hempstead Harbor
31. Hempstead Harbor	41. Hempstead Harbor	51. Hempstead Harbor
32. Hempstead Harbor	42. Hempstead Harbor	52. Hempstead Harbor
33. Hempstead Harbor	43. Hempstead Harbor	53. Hempstead Harbor
34. Hempstead Harbor	44. Hempstead Harbor	54. Hempstead Harbor
35. Hempstead Harbor	45. Hempstead Harbor	55. Hempstead Harbor
36. Hempstead Harbor	46. Hempstead Harbor	56. Hempstead Harbor
37. Hempstead Harbor	47. Hempstead Harbor	57. Hempstead Harbor
38. Hempstead Harbor	48. Hempstead Harbor	58. Hempstead Harbor
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40. Hempstead Harbor	50. Hempstead Harbor	60. Hempstead Harbor



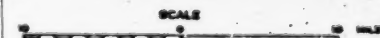
## SYMBOLS

--- COUNTY
--- MINOR CIVIL DIVISION
--- INCORPORATED OR UNINCORPORATED PLACE NOT A MINOR CIVIL DIVISION
--- INCORPORATED OR UNINCORPORATED PLACE WITH FEWER THAN 2,500 INHABITANTS

## TYPE STYLES

WASHINGTON COUNTY	COUNTY
WASHINGTON MINOR CIVIL DIVISION	MINOR CIVIL DIVISION
WASHINGTON INCORPORATED PLACE WITH 50,000 OR MORE INHABITANTS	INCORPORATED PLACE WITH 50,000 OR MORE INHABITANTS
WASHINGTON INCORPORATED PLACE WITH FEWER THAN 50,000 INHABITANTS	INCORPORATED PLACE WITH FEWER THAN 50,000 INHABITANTS
WASHINGTON UNINCORPORATED PLACE	UNINCORPORATED PLACE

# Vicinity of New York City



Congressional District

Area

21st C.D.	390,467
22nd C.D.	390,353
23rd C.D.	390,423
24th C.D.	390,457
25th C.D.	404,011
26th C.D.	404,880
27th C.D.	409,349
28th C.D.	405,308
29th C.D.	415,511
30th C.D.	421,628
31st C.D.	419,089
32nd C.D.	421,156
33rd C.D.	403,594
34th C.D.	423,028
35th C.D.	410,245
36th C.D.	415,137
37th C.D.	415,163
38th C.D.	416,243
39th C.D.	416,447
40th C.D.	416,284
41st C.D.	416,312

\* For districts 1, 25 through 37, and 41, population figures are exact and accurate. For districts 2 through 24 and 38 through 40, actual population may vary very slightly from figure shown, but in no case would difference be more than a few hundred.



**Appendix E**

**Appellant's Suggested Plan  
(New York City)**

**(Photoprint)**

*[For the convenience of Court and Counsel this  
Exhibit is bound in on the opposite page.]*







NEW YORK CITY DISTRICTS  
UNDER PLAINTIFF'S PLAN

**Appendix F**

**Appellant's Suggested Plan  
(Outside New York City)**

*[For the convenience of Court and Counsel this  
Exhibit is bound in on the opposite page.]*

DEPARTMENT OF COMMERCE

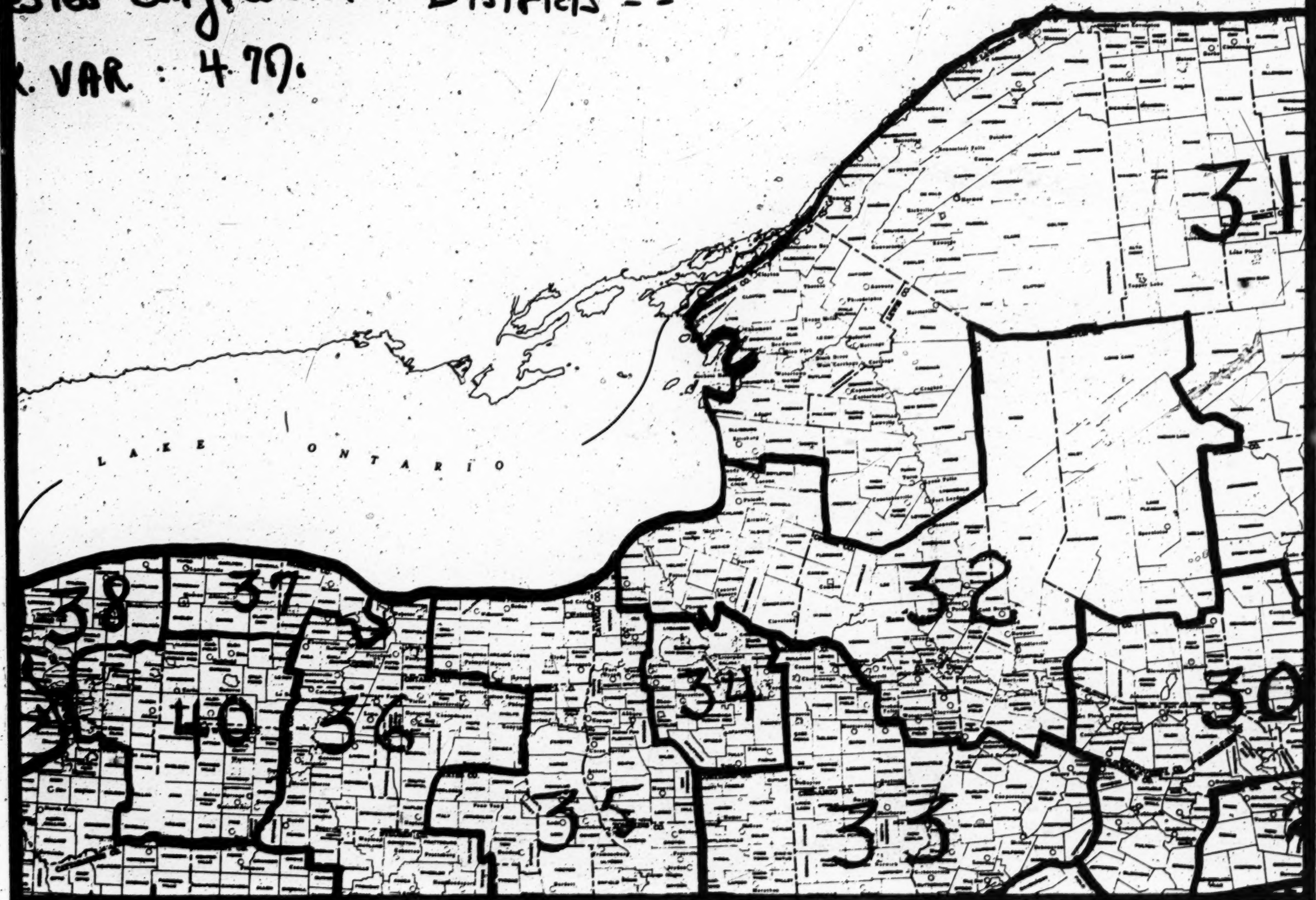
Suggested Congressional  
MAX. VAR. : 4.77.



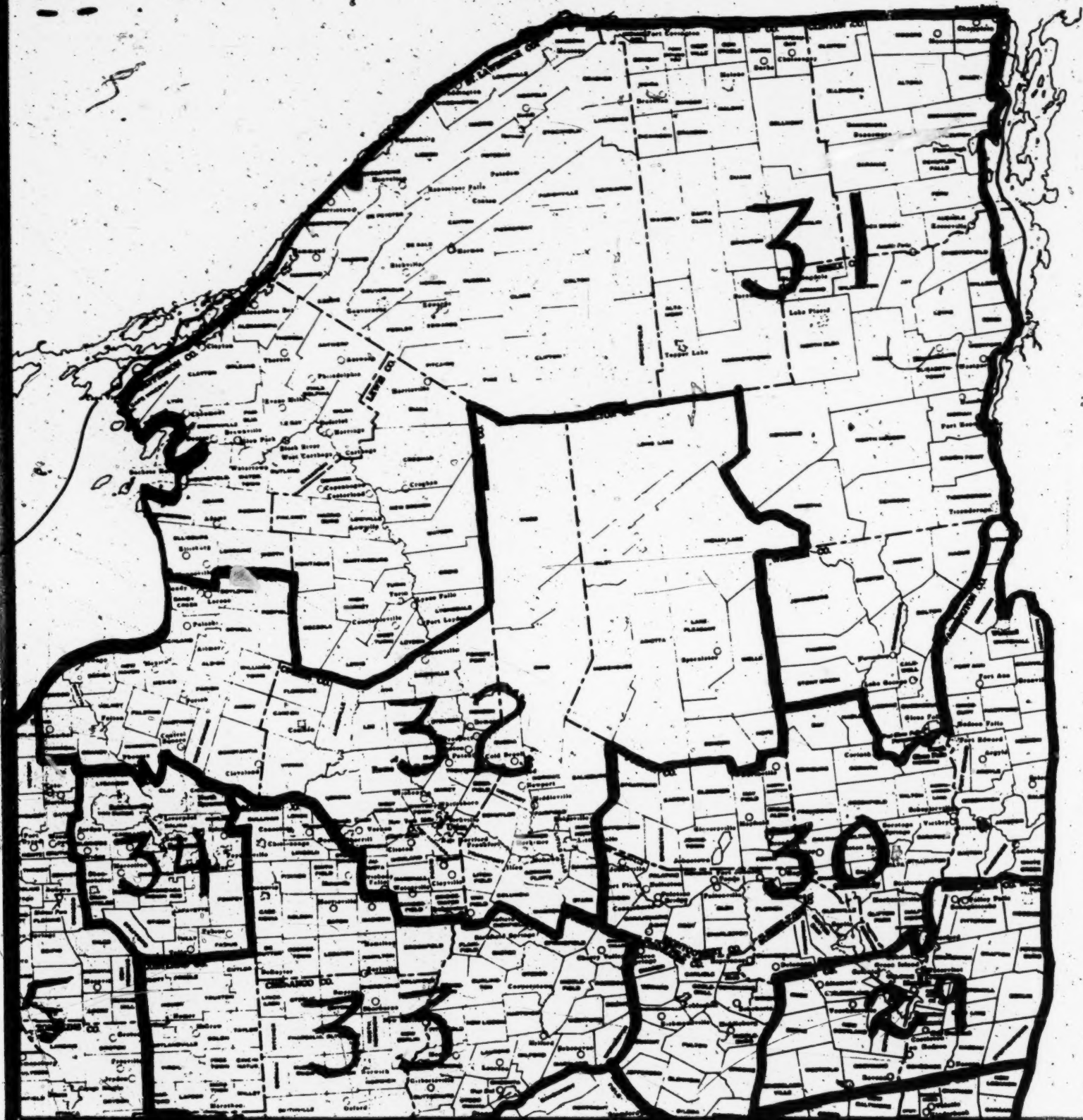


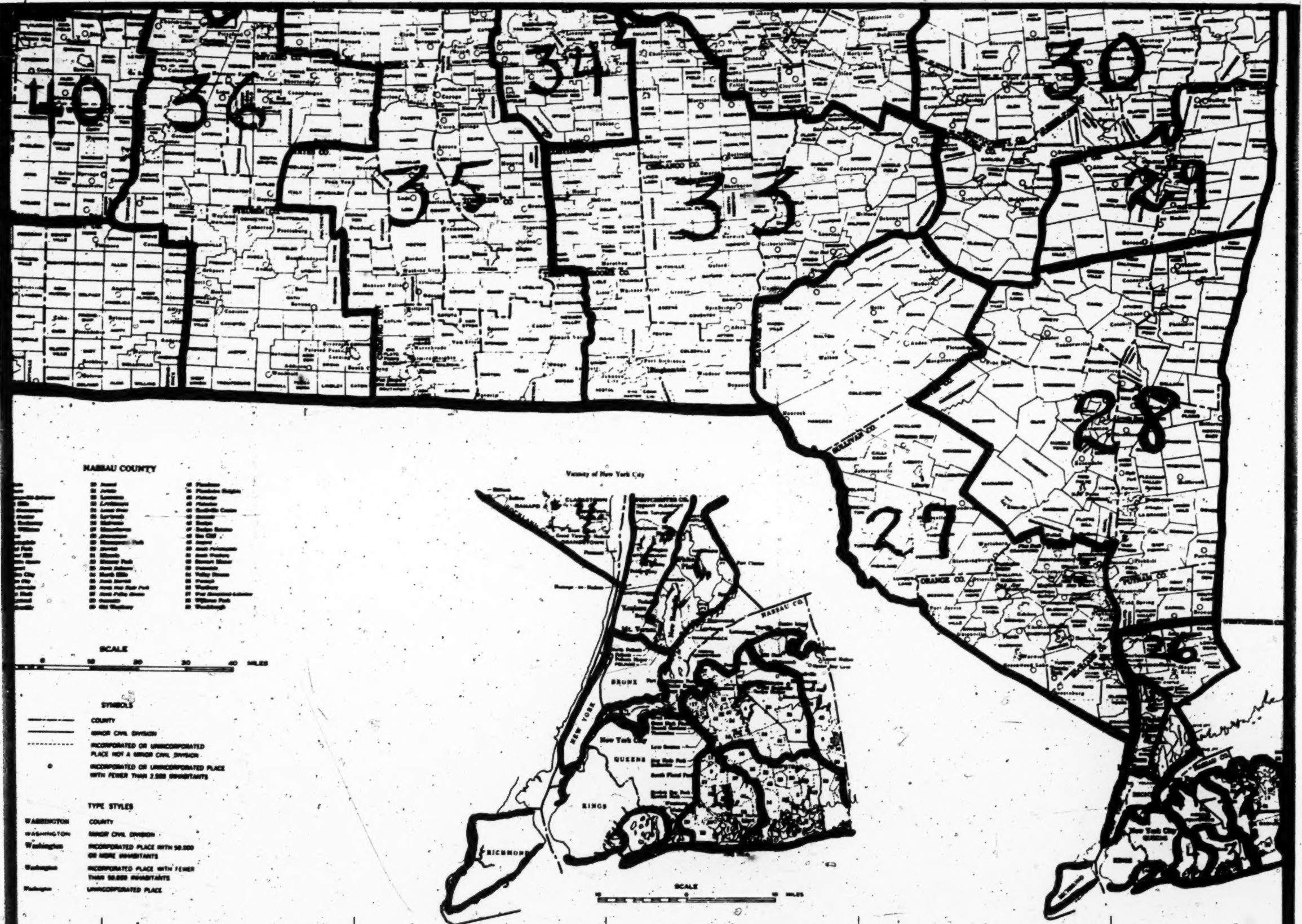
Proposed Congressional Districts --

R. VAR. : 479.









WESTCHESTER COUNTY

- |       |  |
|-------|--|
| ●     | City   |
| ○     | Village  |
| □     | Hamlet   |
| ■     | Unincorporated place   |
| —     | County line  |
| - - - | Minor civil division   |
| —     | Incorporated or unincorporated place not a minor civil division        |
| ○     | Incorporated or unincorporated place with fewer than 2,500 inhabitants |

SCALE



SYMBOLS

- |       |  |
|-------|--|
| —     | COUNTY   |
| - - - | MINOR CIVIL DIVISION   |
| —     | INCORPORATED OR UNINCORPORATED PLACE NOT A MINOR CIVIL DIVISION        |
| ○     | INCORPORATED OR UNINCORPORATED PLACE WITH FEWER THAN 2,500 INHABITANTS |

TYPE STYLES

- |             |   |
|-------------|---|
| WESTCHESTER | COUNTY  |
| Westchester | MINOR CIVIL DIVISION                                  |
| Westchester | INCORPORATED PLACE WITH 50,000 OR MORE INHABITANTS    |
| Westchester | INCORPORATED PLACE WITH FEWER THAN 50,000 INHABITANTS |
| Westchester | UNINCORPORATED PLACE                                  |

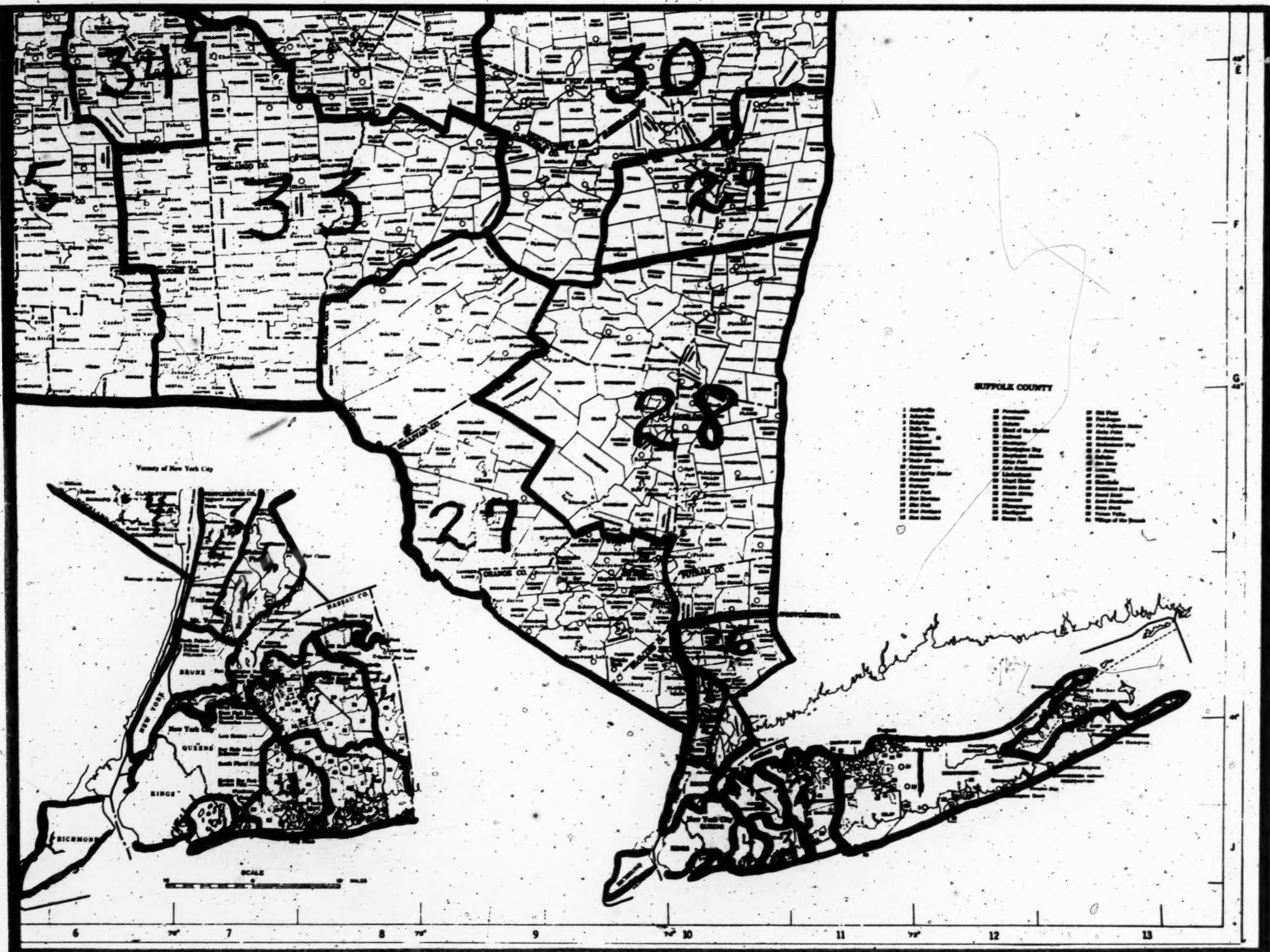
Neighborhood of New York City



SCALE







**APPELLEES'**  
**BRIEF**





DEC 5 1968

**Supreme Court of the United States** WILLIAM DAVIS, CLERK

**OCTOBER TERM, 1968, NO. 238**

**DAVID I. WELLS,**

*against*

**Appellant,**

**NELSON A. ROCKEFELLER**, as Governor of the State of New York, **LOUIS J. LEFKOWITZ**, as Attorney General of the State of New York, **JOHN P. LOMENZO**, as Secretary of the State of New York, **MALCOLM WILSON**, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and **ANTHONY J. TRAVIA**, as Speaker and Presiding Officer of the Assembly of the State of New York,

**Appellees.**

**BRIEF FOR APPELLEES**

**LOUIS J. LEFKOWITZ**  
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State of New York  
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**SAMUEL A. HIRSHOWITZ**  
First Assistant Attorney General

**GEORGE D. ZUCKERMAN**  
Assistant Attorney General  
*of Counsel*



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# Supreme Court of the United States

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OCTOBER TERM, 1968, No. 238

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DAVID I. WELLS,

Appellant,

against

NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Appellees.

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## BRIEF FOR APPELLEES

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### Statement

The present action was filed in the Southern District of New York on June 29, 1966 challenging the constitutionality of New York's 1961 Congressional Districting Act (L. 1961, ch. 980) as being violative of Article I, § 2 and the Fourteenth Amendment to the Constitution of the United States.

Although the 1961 Congressional Districting Act predated the decisions of this Court in *Baker v. Carr*, 369 U. S. 186, and *Wesberry v. Sanders*, 376 U. S. 1, the Joint Legislative Committee on Reapportionment of the New York Legislature recognized that in the drawing of congressional districts, "the most important standard is sub-



stantial equality of population." N. Y. Legis. Doc. No. 45 (1961), page 4. The Committee recommended that a maximum variation of 15 per cent from average population per district would "preserve substantial equality of population and permit consideration to be given to other important factors such as community of interest and the preservation of traditional associations." *Id.* at 4-5. It may be remembered that the maximum variation of 15 per cent from average population per district was the standard then recommended by the American Academy of Political Science and endorsed by former President Truman for the creation of congressional districts. *Ibid.*

In its opinion issued on May 10, 1967, the statutory three-judge Court declared that the standards followed by the New York Legislature in 1961 have become "outmoded" as a result of recent reapportionment decisions of this Court. Accordingly, the District Court held that "[o]n the basis of population inequality alone," the 1961 Act, with congressional districts ranging from 15.1% above average to 14.4% below average, "fails to meet constitutional standards." *Wells v. Rockefeller*, 273 F. Supp. 984, 989; A. 20, 30. In view of this conclusion, the Court did not deal with plaintiffs' other objections concerning alleged lack of compactness and so-called partisan gerrymandering, except to note that with respect to the latter point, no proof had been offered. 273 F. Supp. at 987; A. 25.

In determining an appropriate remedy, the District Court acknowledged that it might be preferable to defer requiring new congressional districts until the 1970 census since:

"Accuracy would call for a decree which would be based upon the 1970 census, knowledge of the number of congressional seats, and the immediate enactment in 1971 of a constitutional Act based upon the Supreme Court mandates, which Act would apply to the 1972 election of congressmen and which would

retain jurisdiction in this court as a forum before which the litigants could press alleged failures to proceed. \* \* \* 273 F. Supp. at 991; A. 33.

However, the District Court interpreted the decisions of this Court in *Swann v. Adams*, 383 U. S. 210, 385 U. S. 440, as precluding such an extension.

In attempting to resolve this dilemma, the District Court directed the New York Legislature to enact into law a new congressional districting plan, effective no later than March 1, 1968, but at the same time, suggested a "compromise" solution, in the following words:

"\* \* \* Acting upon the assumption that accurate congressional representation (1972-1982) must await the 1970 census and upon the Supreme Court's understandable objection to protracted delay, a compromise may be in order. The 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present. There are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities. \* \* \* 273 F. Supp. at 992; A. 34.

The order of the District Court was affirmed, *per curiam* by this Court, Justice HARLAN dissenting, on December 18, 1967. 389 U. S. 421; A. 40-43.

With the suggested "compromise" of the District Court in mind, the 1968 Legislature drew new congressional districts for 29 of the State's 41 congressional districts. L. 1968, ch. 8. Since the United States Census Bureau advised State officials in the summer of 1967 that a new statewide census could not be completed before the fall of 1968 (A. 119), the Legislature was required to employ 1960 census figures as affording the only available statewide population figures. See Interim Report of the Joint Legislative Committee on Reapportionment, 1968, pp. 3-6; A. 55-58.

Following more than three months of work by the Joint Legislative Committee on Reapportionment in drafting the new congressional lines, the 1968 congressional districting bill (Senate No. 3988, Assembly No. 5780) was introduced in both Houses of the New York Legislature on February 20, 1968. The bill received overwhelming bi-partisan support in passing the Assembly by a vote of 126 to 19 and the Senate by a vote of 51 to 5 on February 26, 1968 and on that same day was signed into law by Governor Rockefeller as Chapter 8 of the Laws of 1968. *N. Y. Times*, Feb. 27, 1968, p. 1.

After examining the new congressional districts established by Chapter 8 and analyzing the rationale of the congressional districting plan as contained in the Interim Report of the Joint Legislative Committee on Reapportionment, *supra*, the Attorney General's brief, and as expounded at a court hearing on March 12, 1968 by representatives of the New York State Legislature (A. 110-140), the Court below found that the population disparities in the 1961 Act had been remedied and that the minor disparities in the 1968 Act were based on recognition by the Legislature of the natural and historic division of the State into regions and by the desire to maintain county integrity where possible. 281 F. Supp. 821, A. 44-50. The Court concluded that the Legislature had produced a constitutionally valid plan that "at least until the next census, will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts." 281 F. Supp. at 826; A. 50.

The objections to the new congressional districts raised by various intervenors concerning the division of certain neighborhoods in Brooklyn and The Bronx were rejected by the Court which found such divisions to be a necessary result of the creation of new congressional districts based on equal population. In overruling the objections of plain-

tiffs and objectants, the District Court noted that "no proof has been submitted that the Legislature acted in contravention of the precepts of the Supreme Court with respect to congressional reapportionment \* \* \*". 281 F. Supp. at 825; A. 50.

In its judgment entered on April 1, 1968, the District Court decreed that the congressional districting plan set forth in Chapter 8 of the Laws of 1968 was in compliance with its prior order of July 26, 1967 (which, *inter alia*, ordered that the drawing of new congressional districts not be based upon considerations of race, sex or economic status) and that Chapter 8 was in conformity with the requirements of the Constitution of the United States (A. 51-52). Plaintiff David I. Wells has appealed from this judgment. The other original plaintiff, Donald S. Harrington, who prosecuted this action both individually and as Chairman of the State Committee of the Liberal Party of the State of New York, has not joined in this appeal.

### Questions Presented

1. Was the District Court correct in sustaining the constitutionality of New York's 1968 Congressional Districting Act where it found that the disparities in population among the former congressional districts which invalidated the 1961 Act have been remedied, and further found that the minor population disparities among the present districts are based upon rational considerations given by the New York Legislature to the integrity of county and election district lines and to natural and historical regional divisions within the State?

2. Was the District Court required to adopt, in preference to the congressional districting plan enacted into law by the legislative representatives of the State of New York, an alternative districting plan drawn by a private citizen



which does not respect the integrity of existing election district lines, merely because the latter plan may contain smaller population disparities?

3. (a) Does the claim of "partisan gerrymandering" as posed by appellant raise a justiciable issue under the Federal Constitution?

(b) Assuming, *arguendo*, that a claim of partisan gerrymandering raises a Federal constitutional issue, has appellant met his burden of proving that the New York Legislature acted unconstitutionally in establishing the present congressional districts?

### Summary of Argument

The congressional districting plan set forth in Chapter 8 of the Laws of 1968 has been found by the District Court to have eliminated the population disparities among districts that had formed the basis of its prior decision invalidating the 1961 Act. Whereas the former congressional districts varied by as much as 29.5% between adjacent districts in Kings County (Brooklyn), the 1968 Act has created seven new districts in this area with population disparities of less than 1/10 of one per cent.

Since the peculiar geographical contour of the State of New York naturally divides into regions, the District Court found that it was rational for the Legislature to have considered regional distinctions in creating congressional districts so long as equality of population within each region and throughout the State remained the prime consideration, and so long as no discrimination against any region had been shown. In addition to affording recognition to regionalism, the Court below found that the Legislature had sought to maintain the integrity of county and election district lines wherever possible in the creation of congressional districts.

The fact that appellant, a private citizen unconcerned with securing legislative approval, may have been able to produce a plan which on paper contains a somewhat smaller maximum population deviation among congressional districts than the Legislature's plan (4.7% as compared to 6.6%), is not a basis for requiring the invalidation of the 1968 Act. Appellant's plan made little effort to afford recognition to regional differences in constituencies or to avoid the splitting of election district lines in metropolitan areas (a requirement followed by the Legislature to avoid extensive confusion among voters in the 1968 elections). If a single citizen's plan can invalidate a districting statute by a mere showing of apparent arithmetic superiority, the deliberative role of the Legislature would be reduced to merely rubber stamping the computations of a slide rule.

With respect to appellant's claim of so-called "partisan gerrymandering", appellant has failed to present a Federal constitutional issue. The lack of manageable standards to resolve partisan disputes over the drawing of district lines, where countless alternative districting approaches might be available, has wisely led other Federal and State courts to refuse to become "political pawns" in determining such non-justiciable issues.

It would be difficult to conceive of a weaker test case than the instant appeal to pass upon the issue of partisan gerrymandering. Here, the congressional districting plan under review was enacted with extensive bi-partisan support, passing the Democratic-controlled Assembly and the Republican-controlled Senate. No representative of any political party has come forth to attack the new district lines, nor has it been shown how the members of any political party in New York have been the victim of deliberate discrimination.

Appellant has failed to present any evidence to document his charges other than to infer "gerrymandering" from

the non-rectangular shape of a few districts. Such inference not only ignores the political realities of a divided Legislature, but can readily be explained by the fact that the districts in question were based on county and assembly district lines.

The New York Legislature will draw new congressional district lines after the 1970 census when the State is expected to lose at least one congressional seat. But in the meantime, the 1968 Act, in the District Court's words, "will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts" (A. 50).

## ARGUMENT

### POINT I

The decision of the District Court sustaining the constitutionality of New York's 1968 congressional redistricting act is in conformity with the reapportionment decisions of this Court.

In *Roman v. Simcock*, 377 U. S. 695, this Court advised (p. 710):

"... the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

Other reapportionment decisions of this Court have indicated that rational State policies that might be considered in the drawing of district lines include the integrity

of political subdivisions and the recognition of natural or historical boundary lines. *Reynolds v. Sims*, 377 U. S. 533, 579-581; *Swann v. Adams*, 385 U. S. 440, 444.\*

Consistent with the teachings of this Court, the District Court examined the congressional districting plan established by Chapter 8 of the New York Laws of 1968 and found that it passed constitutional muster.

Of prime significance, the District Court, in its opinion below, found that the population disparities, which were the basis of the original complaint and of its prior opinion invalidating New York's 1961 Congressional Districting Act (273 F. Supp. 984) have been remedied by the enactment of the 1968 statute (A. 49).

The former congressional districts established by the 1961 Act ranged from 15.1% above average in the largest district to 14.4% below average in the smallest district. Six of the former congressional districts had a population that was more than 10% above average and seven districts had a population that was 10% below the average population per district in the State. Under the 1968 Congressional Redistricting Act, there is no congressional district in the State containing a population in excess of 10% of the average population per district. The largest disparity among the present congressional districts, 6.4% below the State average, can be explained by rational considerations as will be noted below.

In Kings County (Brooklyn) where the greatest population disparities were found in the 1961 Act, including a population spread of 29.5% between two contiguous dis-

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\* Although the above decisions dealt with State legislative apportionment plans, this Court has indicated that the same principles of law apply to the determination of the constitutionality of congressional districting plans. See *Kirkpatrick v. Preisler*, 385 U. S. 450; *Duddeston v. Grills*, 385 U. S. 455.



tricts, the 1968 Act established seven new districts with the following populations:

C. D.

10	417,122	part of Kings, part of Queens
11	417,090	part of Kings
12	417,298	part of Kings
13	417,040	part of Kings
14	417,080	part of Kings
15	417,090	part of Kings
16	417,478	part of Kings, Richmond

There can be no dispute with the District Court's conclusion that "[a]lmost absolute equality has been attained for these seven districts \* \* \*" (A. 48).

The minor population disparities under the 1968 statute were found by the District Court to rest upon rational considerations given by the Legislature to achieving equality of population throughout the State and within the natural geographic and economic regions within the State, the geographical conformation of the area to be districted, the maintenance of county integrity wherever possible, and the desire to avoid needless splitting of existing election districts in metropolitan areas which would require Boards of Election to change their enrollment books and to notify all registered voters of such changes. See Interim Report of the Joint Legislative Committee on Reapportionment, A-53-73; statement of counsel for the Legislature before the three-judge Court, Steno. Minutes, Hearing of Mar. 12, 1968, pp. 22-71; A. 110-140.

Recognizing that the peculiar geographical contour of the State naturally divides into regions, the District Court found that it was rational for the Legislature to take these regions into account in establishing congressional districts so long as equality of population within the region and throughout the State remained the prime consideration, and so long as no discrimination had been shown.

For example, the Court found that it was logical in view of its population, interest, finances, charter, custom, and history, to separate the City of New York from the rest of the State in establishing congressional districts. Since the 19 Districts accorded New York City average 409,109 per hypothetical district as against a State average of 409,326, no charge of discrimination can be made, nor was made by any of the parties, with respect to such separation. Appellant "does not quarrel with this treatment of New York City as a unit \* \* \*". Brief for Appellant, p. 21.

The City of New York, itself, divides into geographical segments with Manhattan (New York County) and The Bronx being separated by water from the rest of the City. Since the population of The Bronx (1,424,815) was insufficient to support four full congressional districts, the Legislature joined the southwest extension of the 23rd district in The Bronx to an area in Manhattan to which it is linked by four bridges. Interim Report, *supra*, A. 64-66. The eight districts accorded to The Bronx and Manhattan range in population from 390,023 to 390,861.

The population of Queens (1,809,578) presented a problem since its division into four or five full districts would have produced excessive disparities from the State mean. Since the Rockaways (a peninsula that is part of Queens though linked by a toll bridge to Brooklyn), with a population of 70,891, had previously been linked with the congressional districts in Brooklyn, the Legislature maintained that division. As a result, four districts lying wholly within Queens were created, with a population range of 434,770 to 434,552. Since Richmond (Staten Island), with a population of 221,991 is not large enough to support a full district, it was joined with Kings and the Rockaway peninsula to create seven districts ranging from 417,040 to 417,478.

Since the area east of New York City contains only the Counties of Nassau and Suffolk, equality of population per

district within this area required the establishment of five districts with populations ranging from 393,585 to 393,183.

In establishing congressional districts north of the New York City line, the Legislature adhered to county lines wherever possible.\* Westchester, a large county, was merged with adjacent Putnam, a small county to produce two districts of 420,146 and 420,467 persons. None of the other counties north of New York City have been divided in the creation of congressional districts except for Monroe and Erie Counties, whose populations of 586,387 and 1,064,688 respectively, were too large to prevent their division. Monroe County was divided along the Genesee River—as it had been in the prior two redistricting laws (L. 1961, ch. 980, L. 1951, ch. 839)—to create the 36th and 37th Congressional Districts with populations of 410,943 and 410,432 respectively.

While no district can be regarded as the private preserve for any incumbent if it offends the equality of population principle, the Legislature also recognized that effective representative government dictates against needless changes in congressional constituencies.\*\* Since, after the results of the 1970 census have been announced new congressional districts will, in all likelihood, have to be drawn in the State of New York in time for the 1972 elections (see p. 33, *infra*), the Legislature had extra cause to maintain the congressional districts in the area of the State with small disparities in population. As a result, the congressional districts in the western half of the State, where no district under the 1961 statute exceeded the State mean by more than 6.6%, were left intact in the new statute.

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\* New York has traditionally prohibited the division of counties with less than a full ratio in the formation of state senate districts. N. Y. Const., Art. III, § 4.

\*\* In *Reynolds v. Sims*, 377 U. S. 533, 583, this Court recognized that " \* \* \* Limitations on the frequency of reapportionment are justified by the need for stability and contiguity in the organization of the legislative system, \* \* \*".

Despite the fact that these western districts were not criticized in the prior opinion of the District Court overturning the 1961 statute, appellant now argues that districts with smaller disparities should have been created in this area. Although smaller disparities from the State mean could have been established in that area by creating new districts, the existing districts rest upon rational State policies. For example, the 38th C.D. which contains the largest deviation from the State mean ( $-6.6\%$ ) consists of the small agrarian counties of Chautauqua, Cattaraugus, Allegany, Steuben and Schuyler in the southwest portion of the state. Appellant suggests merging that district with a portion of Erie County. However, whereas the people of Erie and Niagara Counties form part of the same standard metropolitan statistical area (the so-called Niagara Frontier) and are treated as a unit in various Federal and State projects, the population of the five aforementioned southwest counties have no common interest or link with the people in Erie County. See Interim Report, *supra*, pp. 15-16 (A. 67); Steno. Minutes, Hearing of March 12, 1968, pp. 51-54 (A. 127-129).

Since the District Court recognized that the population along the Niagara Frontier "could not very well be shunted into the more easterly counties", the provision for three congressional districts in this area with populations ranging from 435,393 to 435,880 were found by the Court to be satisfactory (A. 48).

The District Court concluded that:

"The gross population disparities, which were the source of plaintiffs' original complaint and which brought about a declaration of unconstitutionality, have been remedied so that equality is to be found in regions logically selected for the various congressional districts." 281 F. Supp. at 825 (A. 49).



## POINT II

The 1968 congressional districts in New York compare favorably with other judicially sanctioned congressional districting plans.

It should be acknowledged that the new congressional district lines in New York, with a maximum population deviation of 6.6% from the State mean, compare favorably with congressional districting plans that have been judicially approved in other states.

In Illinois, a Federal three-judge Court working in conjunction with the Supreme Court of Illinois adopted its own plan for 24 congressional districts which range in population from 7.5% above average to 6.1% below average. *Kirby v. Illinois State Electoral Board*, 251 F. Supp. 908 (N. D. Ill., 1965); *People ex rel. Scott v. Kerner*, 33 Ill. 2d 460, 211 N. E. 2d 736.

In Arizona, a Federal Statutory Court also drew its own plan for three congressional districts which ranged in population from 5.18% above average to 6.64% below average. *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz., 1966).

In Alabama, a Federal Statutory Court sustained a 1965 congressional districting act for eight congressional districts which ranged in population from 7.3% above average to 6.0% below average. *Moore v. Moore*, 246 F. Supp. 578 (S. D. Ala., 1965).

In California, the State's highest court approved a congressional districting statute for 38 congressional districts ranging in population from 8.1% above average to 6.0% below average. *Silver v. Reagan*, 64 Cal. Rptr. 328, 434 P. 2d 621 (1967).

In *Kirk v. Gong*, 389 U. S. 574, this Court affirmed the judgment of a Florida District Court which had adopted a congressional districting plan whose largest district—based on 1960 census figures—is 8.78% above the State mean.

Other states in which congressional districting plans have been judicially approved with larger population disparities than found in New York's present Act, based on 1960 census figures, are Kansas: *Meeks v. Avery*, 251 F. Supp. 245 (D. Kans., 1966); Nebraska: *Exon v. Tiemann*, 279 F. Supp. 609 (D. Neb., 1968); and New Hampshire: *Levitt v. Maynard*, 107 N. H. 38, 216 A. 2d 778 (1966).

Appellant, on the other hand, points to the decision of the District Court in *Preisler v. Secretary of State of Missouri*, 279 F. Supp. 952 (W. D. Mo., 1967),\* where a plan with a maximum population spread of 25,802 was held invalid. However, the *Preisler* decision was based on considerations which are entirely inapposite to the situation in New York. The Missouri Federal Court, in invalidating the 1967 Congressional Districting Act, held that the districts created by that Act in rural areas were over-valuated in contrast to districts in metropolitan areas and that the Act particularly discriminated against the metropolitan area of St. Louis and Kansas City. *Id.* at 975. By contrast, no claim has been made, nor can be made, that the new congressional districts in New York discriminate against any metropolitan area. Moreover, the majority of the District Court in Missouri believed that the Legislature had decided that it could create minor deviations among districts under a so-called "de minimus" rule without having to present any rational considerations for such deviations.

The New York Legislature did not choose a 6.6% maximum deviation as a "safe tolerance" figure within which districts could be created. It recognized, as this Court has pointed out:

"\* \* \* the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State. 'What

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\* This decision is now being appealed in *Kirkpatrick v. Preisler* (No. 30) and *Heinkel v. Preisler* (No. 31).

is marginally permissible in one State may be unsatisfactory in another, depending upon the particular circumstances of the case. *Reynolds v. Sims*, 377 U. S. 533, 578.' " *Swann v. Adams*, 385 U. S. 440, 445.

Rather, as described above, the present congressional districts in New York were the result of legislative determination to create congressional districts that were equal in population with minor disparities only where necessary to afford recognition to natural geographic regions and to the integrity of county and election district lines.

### POINT III

The submission of a districting plan drawn by a private citizen did not require the District Court to invalidate the congressional redistricting statute enacted by the New York Legislature merely because the former plan assertedly contained smaller population disparities.

Appellant, representing no legislative constituency, and subject only to his own private desires, has attempted to carve out a congressional districting plan for the State of New York. Since his plan, on paper, contains a somewhat smaller maximum deviation among its congressional districts than the plan enacted by the Legislature (4.7% as compared to 6.6%), appellant concludes that the State has failed to make an honest and good faith effort to construct districts "as nearly of equal population as is practicable."

It is extremely questionable whether appellant's plan can be properly referred to as a districting plan. Anyone who has ever witnessed the work of technicians employed by the New York Legislature in transferring census enumeration tract figures to enlarged maps of counties, towns, and assembly districts (A. 132) that often exceed thirty feet in length, may have cause to doubt whether a private citizen, without access to such legislative maps, can draw districts

with adequate descriptions.\* It is, therefore, not surprising that the consultant for the New York State Senate testified at the hearing below that he was unable to draw a map of appellant's plan in Nassau County because of its inadequate descriptions (A. 124).

The inexactitude of plaintiff's plan is illustrated by the fact that the population figures offered by him for twenty-six of his proposed congressional districts are admittedly only approximate estimates. See Appendix D of Brief for Appellant.

It is also apparent that appellant's plan made little attempt to respect the integrity of existing election district lines in the drawing of congressional districts in metropolitan areas. Yet, the adoption of a districting plan, which failed to recognize the integrity of these lines, could have led to chaos in the conduct of the primary and general elections in 1968.

Since a system of permanent personal registration applies throughout most of the State of New York, Election

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\* During the 1965 session of the New York Legislature, an attempt was made to draw new Assembly and Senate district lines after the State's highest Court had ruled that the district lines drawn by the previous session were in violation of the State Constitution. *Matter of Orans*, 15 N. Y. 2d 339. In a letter to the three-judge statutory court sitting in *WMCA, Inc. v. Lomenso*, 238 F. Supp. 916 (S.D.N.Y. 1965), the counsel to the Speaker of the Assembly stated on April 20, 1965 that his reapportionment staff had already spent 1570 $\frac{3}{4}$  man-hours in their effort to draw new legislative district lines, but had not yet completed their task. Three weeks later (and at least another one thousand man-hours of work), the Speaker of the Assembly presented a districting plan for the State Assembly to the three-judge statutory court. Although offered as a completed plan, this Assembly plan was later found to have inadvertently omitted 5 towns and several cities in the State of New York in its description of Assembly districts. Even the technicians employed by the Judicial Commission appointed by the New York Court of Appeals to draw Assembly and Senate district lines in 1966 (*Matter of Orans*, 17 N. Y. 2d 107) inadvertently omitted the Town of DeWitt from its description of legislative districts. 17 N. Y. 2d 721.



Law [1967] § 350 (2), the great majority of New York residents do not have to register prior to voting on Election Day. Registration records are tabulated according to election districts (generally containing no more than 1500 persons) and since each voting machine in an election district must contain the same set of candidates, the "splitting" of an established election district line by a new congressional district would require the Board of Elections to (1) attach the detached part of the district to an existing district or to create a new election district, (2) notify individually all persons living in that part of the district which is changed and (3) change all election enrollment records and "buff cards" to conform to the altered election districts. For all of the above reasons, the New York Legislature made an earnest attempt to maintain election district lines where at all possible, to reduce the work of the individual Boards of Election to a minimum. Only 16 election districts were altered by the Legislature throughout the entire State. Interim Report of the Joint Legislative Committee on Reapportionment, *supra*, p. 9 (A. 60-62).

On the other hand, the maps for the 6th and 7th Congressional Districts drawn by appellant reveal a division of 20 existing election districts in that part of Queens County alone (A. 132). Based on that projection, it was testified below that well over 100 election districts would have been divided within the City of New York alone by appellant's plan.

Even apart from the above irregularities in appellant's plan, it was not incumbent upon the Court below to have rejected a plan enacted by the legislative representatives of the citizens of New York merely because a private citizen—unconcerned with the need to secure sufficient support among the diverse interests represented in the State Legislature—produced a plan which on paper appears to be numerically superior. To accept plaintiff's plan on this basis alone would fly in the face of the legis-

lative process. As a Federal court recognized in *Moore v. Moore*, 246 F. Supp. 578, 582 (S. D. Ala., 1965):

"Although constitutional rights and principles cannot be ignored or made subordinate to political expediency, courts recognize the fact that legislative bodies in a democracy do not, and cannot perform and function according to a slide rule, or with mathematical precision and certainty. Democracy does not operate in that fashion. There remains the necessity of giving consideration to all legitimate contentions, interests and other appropriate factors involved in the legislative process."

In similarly rejecting an attempt by litigants to have a Federal statutory court select a private plan that was offered as being superior to the Congressional Districting Act of the Legislature, the Court in *Bush v. Martin*, 251 F. Supp. 484, 510 (S. D. Tex., 1966), stated:

"Thus the fact that districting within a 1% tolerance is attainable by a process other than legislative cannot be the final test as to what is reasonable and practicable for legislative action. Courts, faithful to concept of separation of powers, must recognize therefore the operative effect of so-called 'political' factors so long as they do not represent invidious attacks on, or denials of, identifiable basic freedoms such as race or religion. So long as the result passes muster on substantial numerical equality, these might include here such things as the desire to minimize as much as possible the pairing of incumbent congressmen in the transition from the old (unconstitutional) to the new districting, the retention of counties as whole units, the retention so far as possible of former groupings of counties, and the like."

The specific proposals in appellant's plan cited to support his contention that the Legislature could have produced smaller population disparities (Brief for Appellant,

pp. 22-23) merely reflect his refusal to recognize the geographic and historic factors which were considered by the Legislature.

Appellant would withdraw the northern districts by shifting Lewis County from the 31st to the 32nd Congressional District and Hamilton County from the 30th to the 31st Congressional District. However, Lewis County, which is located within the Adirondack Preserve (the forest preserve which must be kept "forever wild" by command of the State Constitution, Art. XIV, § 1), traditionally has been linked with the northern counties that fall within this geographically isolated area (the so-called "Blue-line counties"). (S. M., Hearing of March 12, 1968, pp. 54-57, A. 129-131.) To have linked this county southward with Oneida County, as appellant suggests, would have produced the illogical result of merging an Adirondack county with the Mohawk Valley's urban centers.\*

Appellant's suggestion with respect to Hamilton County, which would remove it from the same district with Fulton County, ignores the fact that because of its small population, Hamilton County has historically been united in government and interest with Fulton County and has even been required under the New York Constitution to share the same Assembly seat. N. Y. Constitution, Art. III, § 5.

Ultimately, appellant's position leads to the conclusion that any citizen may set aside a redistricting statute enacted by the elected representatives of the public by pointing to a paper plan containing smaller population disparities. Were such a conclusion to be accepted by this Court, the State legislatures might just as well be replaced by computers in the establishment of district lines.

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\* Appellant's contention that the "Blue-line counties" are grouped somewhat differently in the State Legislature overlooks the fact that such legislative districts are much smaller in population than the average population of congressional districts.

The basic fallacy in appellant's approach is that it discards the traditional role of the courts in examining the constitutionality of State statutes. That role is not to determine whether the statute before it is the wisest that might have been conceived. *Cf. Ferguson v. Skrupa*, 372 U. S. 726. Nor is it the function of a Federal court to sit as a reapportionment commission to pass upon competing redistricting plans. Rather, when a redistricting statute is before it, the court's duty is to determine whether such statute conforms to the requirements of the Constitution of the United States. *Sincock v. Roman*, 233 F. Supp. 615, 619 (D. Del., 1964), *aff'd* 377 U. S. 695.

The Court below has examined New York's 1968 congressional redistricting statute in that light and found, as we have seen, that it properly meets these requirements by creating districts that are substantially equal in population while affording recognition to rational State policies.

#### POINT IV

**Appellant's claim of partisan gerrymandering presents a non-justiciable issue and, in any event, is totally without merit.**

In attempting to challenge the constitutionality of New York's 1968 Congressional Districting Act upon the ground of "partisan gerrymandering", appellant has raised a "non-justiciable issue" which Federal courts consistently have refused to consider. See *e.g., WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916, 925-926 (S.D.N.Y., 1965), *aff'd* 382 U. S. 4; *Bush v. Martin*, 251 F. Supp. 484, 513 (S. D. Tex., 1966); *Sincock v. Gateley*, 262 F. Supp. 739, 831-833 (D. Del., 1967); *Meeks v. Avery*, 251 F. Supp. 245 (D. Kans., 1966); see also *Jones v. Falcey*, 48 N. J. 25, 222 A. 2d 101, 105 (1966).

In *WMCA, Inc. v. Lomenzo*, *supra*, this Court affirmed the judgment of the District Court which, in sustaining



the constitutionality of a legislative plan (Plan A), had held that claims of partisan gerrymandering did not raise a Federal constitutional issue. In his concurring opinion, Mr. Justice HARLAN observed (382 U. S. at 5-6):

"In *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916, the three-judge Court found that Plan A satisfied this order; in so doing it rejected contentions that apportioning on a basis of *citizen* population violates the Federal Constitution, and that partisan 'gerrymandering' may be subject to federal constitutional attack under the Fourteenth Amendment. In affirming this decision, this Court necessarily affirms these two eminently correct principles."

In *Badgley v. Hare*, 385 U. S. 114, an appeal from the decision of the Supreme Court of Michigan (377 Mich. 396) contending that the apportionment scheme approved by that Court was based on political gerrymandering, was dismissed by this Court "for want of a substantial Federal question". It has been said that "votes to affirm summarily, and to dismiss for want of a substantial Federal question, it hardly needs comment, are votes on the merits of a case . . .". *Ohio ex rel. Eaton v. Price*, 360 U. S. 246, 247 (Memorandum of Mr. Justice BRENNAN). See also, *Port Authority Bondholders Protective Committee v. Port of New York Authority*, 270 F. Supp. 947, 950-951 (S.D.N.Y., 1967).

Appellant contends that certain opinions of this Court were premised on the assumption that the issue of partisan gerrymandering raises a Federal constitutional issue citing; *Wright v. Rockefeller*, 376 U. S. 52; *Fortson v. Dorsey*, 379 U. S. 433; *Burns v. Richardson*, 384 U. S. 73 and *Gomillion v. Lightfoot*, 364 U. S. 339. However, the *dicta* in the *Fortson* and *Burns* opinions dealt only with multi-member apportionment schemes and have no relevance to the single-member districting scheme involved in the instant case, while the *Wright* and *Gomillion* cases dealt with the

issue of racial gerrymandering which again has no relevance here. Indeed, on the issue of justiciability, this Court in *Gomillion* held, 364 U. S. at 346, 347:

"When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. *Apart from all else, these considerations lift this controversy out of the so-called 'political' arena and into the conventional sphere of constitutional litigation.*" (emphasis supplied)

With respect to partisan districting, there is no express mandate such as the Fifteenth Amendment to protect the members of political parties. Moreover, since voters can change their mind,\* unlike their race, there is not even a "readily isolated segment" of any political minority to simplify the determination and application of proper districting standards. Thus, unlike *Gomillion*, there is here no basis for lifting alleged partisan gerrymandering controversies out of the political arena and into the arena of constitutional litigation.

The immense difficulties inherent in any judicial effort to resolve claims of partisan gerrymandering have similarly been recognized by the State courts. The problem was well described by the Supreme Court of New Jersey in *Koziol v. Burkhardt*, 51 N. J. 412, 241 A. 2d 451, 453 (1968), where,

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\* The recent political history of New York State can provide innumerable examples of frequent shifts in political persuasions. Examples of the difficulties in predicting political fortunes in congressional races in New York State were pointed out by Circuit Judge Moore in his opinion in *Honeywood v. Rockefeller*, 214 F. Supp. 897, at 902-03, n. 6 (E.D.N.Y., 1963), *aff'd* 376 U. S. 222.

quoting from its earlier opinion in *Jones v. Falcey*, 48 N. J. 25, 222 A. 2d 101, 105, the Court held:

"The trial court described such issues as non-justiciable. Perhaps it would be more accurate to say such issues are beyond judicial condemnation, not because the controversy is beyond the jurisdictional authority of the Court, but rather because the Constitution does not prescribe a single approach or motivation for the drawing of district lines, and hence the Constitution is not offended merely because a partisan advantage is in view. Indeed, it would be difficult to separate partisan interests from other interests, since partisan interests may well be but a summation of such other interests. In addition, it would seem impossible for a court to pass upon the validity of political interests without itself making a political judgment or appearing to do so. For these reasons the view generally taken in this new area of judicial activity is that, if the mathematics are acceptable, it rests with the voters, rather than the Court, to review the soundness of the partisan decisions which may inhere in the lines the Legislature drew. . . ."

#### A. The Lack of Judicially Discoverable Standards in Partisan Gerrymandering Disputes

In *Baker v. Carr*, 369 U. S. 186, this Court, in speaking of a test for defining a non-justiciable political question, stated (p. 217):

"Prominent on the surface of any case held to involve a political question is found . . . a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion . . ."

These criteria of non-justiciability clearly apply to questions as to gerrymandering. A claim that a judicially enforceable constitutional right exists necessarily implies that

there are principles or rules derivable from the Constitution by which the validity of the claim can be judged, and which can be used in devising an effective remedy. There are, however, no judicially discoverable standards to be derived from the generalized guarantee of the Equal Protection Clause by which the courts may determine the proper shape of legislative districts. If such standards are to be devised, they will necessarily involve initial policy determinations of a legislative rather than a judicial nature.

Appellant, apparently searching for some manageable standards to resolve "gerrymandering disputes" would like this Court to write into the Fourteenth Amendment a set of specific standards to govern congressional districting, including requirements that districts be "compact and contiguous". But such an approach would require this Court to overrule its prior decision in *Wood v. Broom*, 287 U. S. 1, which held that there was no Federal constitutional requirement for compactness and contiguity in the creation of congressional districts.

However, even the adoption of constitutional requirements for compactness and contiguity would not necessarily prevent partisan gerrymandering. One might visualize a square-shaped state entitled to four congressional seats where the members of Party A, with 60% of the voting strength in the state, are located along the periphery of the state's borders, while the members of Party B, with 40% of the state's population, are concentrated in the center of the State. Dividing the state into four equal squares would produce aesthetically pleasing districts, but would still constitute a partisan effort to prevent Party B from capturing any one of the four allotted congressional districts. A recognized expert in the area of reapportionment, in speaking of the "myth of compactness" has stated:

" . . . A rigid compactness-contiguity rule shifts attention from the realities of party voting to mere physical geography. . . .



The reality is that odd-shaped districts sometimes *may* facilitate unfair advantage of one party over another. The reality also is that odd-shaped districts *may be* one way, short of some proportional representation device, of avoiding 'wasted votes,' i.e., of ensuring some minority representation by recognizing a few relatively safe enclaves for the weaker party. In the latter instance questions of representation theory can be raised as to whether it is preferable for a minority to have its own voice in the legislature, or to be voiceless except through the dominant party. But in any event a rigid compactness rule will not provide satisfactory answers." Robert G. Dixon, Jr., *Democratic Representation, Reapportionment in Law and Politics*, 460-461 (New York, Oxford University Press, 1968)

It should also be acknowledged that a constitutional requirement of "compactness" would require courts to take into consideration the fact that population patterns are generally not spread across a state in a checker-board fashion, that state and political subdivision lines are frequently irregular, and that topographical features such as hills, forests and bodies of water do not lend themselves to symmetrical geometric designs.

Even in a metropolitan area such as New York City, the presence of parks, cemeteries, transportation arteries, industrial parks, and the desire to avoid splitting election district lines can unavoidably produce odd-shaped districts. See, e.g., *Matter of Dowling*, 219 N. Y. 44, 58 (1916); see also the shapes of the legislative districts drafted by a judicial commission appointed by and approved by the New York Court of Appeals in *Matter of Orans*, 17A. N. Y. 2d (1967).

When one studies the immense shape of New York City, it is easy to appreciate the exasperation that must have

been felt by Judge Moore when, speaking for a unanimous court in *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D.N.Y., 1963), *aff'd* 376 U. S. 222, he stated (p. 900):

"It is impossible for us to speculate, and indeed it is not our function to do so, on why a district line turns to the right at one street and left at another. There are a myriad of possible variations in the drawing of such lines. . . ."

It should, therefore, be evident that any attempt by the courts to review the shape of legislative districts with a view towards determining claims of partisan gerrymandering would require them to enter a hopeless morass, in which they would be required to weigh map changes, shifting population densities, topographical barriers, competing considerations relevant to various political subdivisions, evidence of legislative motivation, and the interrelationship of all of these factors with respect to adjacent and neighboring districts. Whereas apportionment cases lend themselves to a determination by a ready application of available arithmetic statistics, districting cases would require value judgments among many competing variables, the strength of which would vary from case to case.

In the absence of legislative standards of districting, it cannot profit the administration of justice to require the Federal courts, and particularly this Court, to form an essentially visceral reaction to the shape of each of the thousands of districts that might be subject to challenge throughout the 50 states.

#### **B. Appellant's Lack of Evidence to Substantiate His Charge of Partisan Gerrymandering**

Even assuming *arguendo*, that a claim of partisan gerrymandering presented a justiciable issue under the Federal Constitution, appellant failed to present such evidence before the District Court as would be required to sustain

his burden of proof on this issue. *Cf. Wright v. Rockefeller*, 211 F. Supp. 460 (S.D.N.Y., 1963), *aff'd* 376 U. S. 52, *rehearing denied* 376 U. S. 959; *Honeywood v. Rockefeller*, *supra*.

At the Court hearing below, appellant's argument with respect to this issue merely consisted of the charge that the non-rectangular shape of certain congressional districts, in and of itself, demonstrated that the New York Legislature was guilty of partisan gerrymandering in the enactment of Chapter 8 of the Laws of 1968. In attempting to support this claim, appellant pointed to the shape of the 35th and 6th Congressional Districts.

There can be little question that the 35th and 6th Congressional Districts are not rectangular in shape. However, this hardly supports a charge of constitutionally impermissible partisan gerrymandering. The shape of the 35th Congressional District is determined by the fact that it is made up of eight agrarian counties (all of which are undivided) located in the lower central valley of New York State. A more symmetrical district might have been created by dividing county lines, or by merging several of these agrarian counties with the metropolitan areas of Utica or Syracuse, but such a division or realignment was considered illogical by the Legislature.

It is interesting to note that appellant criticized this district (which has remained the same since it was created in 1961) when he testified as a witness on behalf of the plaintiff in *Honeywood v. Rockefeller*, *supra*, in 1962 contending that the 35th District was drawn to ensure the election of a Republican congressman. Yet, the Democratic Party has elected its candidate in each of the four congressional elections that have taken place since this district was created.

The lines of the present 6th Congressional District, which appellant attacks, are derived from the formation of this

district from the 20th and 22nd Assembly Districts which were created by the Judicial Commission appointed by the New York Court of Appeals (A. 121-122).<sup>\*</sup> The maps of these assembly districts, which were approved by the New York Court of Appeals in *Matter of Orans*, 17 N. Y. 2d 107, may be found in Folder No. 8 contained in 17A. N. Y. 2d.

Appellant's brief before this Court now follows the approach that if he can show that the lines of any one particular district, such as the 6th Congressional District in Queens County, favor a political party, this is enough to invalidate an entire congressional districting scheme. The obvious flaw with such an approach is that *any* districting plan could be invalidated on that basis. Under such a definition, all districting plans could be classified as "gerrymandering" depending upon the "accident of sleeping place". Robert Luce, *Legislative Principles*, 393 (Boston: Houghton-Mifflin Co., 1930); Dixon, op. cit., p. 462.

The impossibility of avoiding partisan results was aptly illustrated by A. Robert Kleiner, Democratic member of the Michigan Apportionment Commission at a National Municipal League Speech in 1966 (quoted in Dixon, op. cit., p. 436):

"Every plan has a political effect, even one drawn by a seventh grade civics class whose parents are all nonpartisans and who have only the United States census data to work with. Even though they drew such a plan with the most equal population in districts, following the maximum number of political subdivision boundaries and with the most regular shapes, it could very well result in a landslide election for a given political party."

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<sup>\*</sup> Congressional districts are frequently formed to coincide with assembly district lines in New York City where political organizations are based on assembly districts or fractions thereof.



Even a more traditional definition of a "gerrymander" would not help appellant's case. For example, a "gerrymander" has been defined as:

"... the abuse of power whereby the political party dominant at the time in a Legislature arranges constituencies unequally so that its voting strength may count for as much as possible at elections and that of the other party or parties for as little as possible. To accomplish this design it masses the voters of the opposing parties in a small number of districts and so distributes its own voters that they can carry a large number of districts by 'small majorities', 6 *Encyclopaedia of the Social Sciences* 638 (1931).

Neither appellant, nor any other objectant below, demonstrated that there was any abuse of power in the enactment of Chapter 8 by the Legislature. In terms of political realities, since the New York Legislature was politically divided in 1968 (with the Democratic Party controlling the Assembly and the Republican Party controlling the Senate), it would have been impossible for any redistricting bill to have passed both houses if it had been drawn to favor a political party. Instead, Chapter 8 received overwhelming bi-partisan support in passing the Assembly by a vote of 126 to 19 and the Senate by a vote of 51 to 5. *N. Y. Times*, Feb. 27, 1968, p. 1.

The weakness in appellant's claim is underscored by the obvious fact that no representative of any of the political parties in New York State have challenged the new congressional districting lines. Even Donald S. Harrington, Chairman of the State Committee of the Liberal Party of the State of New York, who was one of the original plaintiffs in this action in his representative capacity, has withdrawn from this appeal.

In the absence of any proof to support his claim of partisan gerrymandering, appellant argues that a state-

ment offered to the District Court by Donald Zimmerman, a spokesman for the Majority Leader of the Senate, constitutes a concession that the 6th Congressional District in Queens was drawn to provide a minority party with some representation. Based on Mr. Zimmerman's statement with respect to this one congressional district (A. 121-123), appellant makes the repeated statement throughout his brief that all the congressional districts in New York State were drawn to achieve proportional representation along partisan lines—despite the fact that there is not a word about proportional representation in the entire Interim Report of the Joint Legislative Committee on Reapportionment, *supra*. If proportional representation had been the goal of the New York Legislature, it is doubtful whether it would have created seven congressional districts in Kings and Richmond Counties in which the Republican Party, with more than 28% of the voting strength in these counties, was unable to win in any of its seven congressional districts in 1968.

In any event, if Mr. Zimmerman's statement is read in the full context of his remarks before the District Court, it will be seen that he was speaking hypothetically with reference to appellant's contention that the districts in Queens County had been gerrymandered since the Republican Party was expected to win in one of its four districts. In answer to this contention, Mr. Zimmerman had argued that he could see nothing improper if a party which received 43% of the total vote in a county is expected to capture one of its four congressional districts.

There is nothing in Mr. Zimmerman's statement that is inconsistent with any decision of this Court. Indeed, it would appear to be supported by this Court's observation in *Fortson v. Dorsey*, 379 U. S. 433, 439, that a multi-member constituency apportionment scheme which operates to minimize or cancel out the voting strength of racial or

political elements of the voting population might be unconstitutional.\*

In sum, appellant's contentions with respect to "partisan gerrymandering" amount to nothing more than undocumented charges resting upon pure conjecture. Apparently, appellant would have preferred the adoption of his own districting plan. But, as the Court below correctly observed (281 F. Supp. at 825, A. 49-50):

"The Legislature cannot be expected to satisfy, by its redistricting action, the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side.

• • • Were each political party, and factions within each party, permitted to by-pass the Legislature by asking the courts to foist upon the electorate districts of their own draftsmanship and choosing, representative government would no longer exist. Self-interest would be substituted for majority rule. The courts cannot become pawns in such a political chess game."

## POINT V

**Equitable considerations should defer further congressional redistricting in New York until after the 1970 census.**

The Court below found that the congressional districting plan contained in Chapter 8 of the Laws of 1968 was in compliance with the reapportionment directives of this

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\* It has even been suggested that political profile data be furnished to computers to produce party balance deemed reasonable by the programmers in the light of over-all partisan trends in the State. Stewart S. Nagel, "Simplified Bi-Partisan Computer Redistricting", 17 Stan. L. Rev. 863 (1965); Dixon, op. cit., p. 531.

Court and that such plan "will give the voters an opportunity to vote in the 1968 and 1970 elections on a basis of population equality within reasonably comparable districts" 281 F. Supp. at 826 (A. 50).

It must be conceded, however, that there are "few issues in reapportionment cases that are clear beyond debate." Mr. Justice HARLAN, dissenting, in *Rockefeller v. Wells*, 389 U. S. 421, 422 (A. 41). If this Court should now find that any of the congressional districts in the 1968 Act fail to meet constitutional requirements, the question of an appropriate remedy would arise. Cf. *Reynolds v. Sims*, 377 U. S. 533, 586-587; *WMCA, Inc. v. Lomenzo*, 377 U. S. 633, 655.

In considering any further change in congressional districts, it should be recognized that the State of New York has created new congressional district lines in 1961 and 1968. Moreover, regardless of the outcome of this appeal, New York will have to draw new congressional lines after the 1970 census when the State is expected to lose one congressional seat.\*

Thus, any further redrawing of congressional districts prior to the 1970 census would not only be based on population figures that were nine years old, but would result in four changes in congressional constituencies within a ten-year period. Such a result could scarcely be productive of effective representative government. Cf. *Reynolds v. Sims*, *supra*, at p. 583.

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\* In a letter from A. Ross Eckler, Director of the Bureau of the Census, to the Attorney General of New York, dated October 29, 1968, the Bureau of the Census advised that under each of the four alternative series of projections of the population of the States in 1970 set forth in its report, Series P-25, No. 375, "Revised Projections of the Population of States: 1970-1985", the State of New York would lose one congressional seat.



**CONCLUSION**

**For the reasons stated above, the judgment of the Court below should be affirmed.**

**Dated: New York, New York, December 3, 1968.**

**Respectfully submitted,**

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# OPINION

# SUPREME COURT OF THE UNITED STATES

No. 238.—OCTOBER TERM, 1968.

David I. Wells, Appellant, v. Nelson A. Rockefeller, as Governor of the State of New York, et al.	}	On Appeal From the United States District Court for the Southern District of New York.
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[April 7, 1969.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case was argued with *Kirkpatrick v. Preisler*, ante, which affirmed the judgment of a three-judge District Court declaring invalid Missouri's 1967 congressional districting statute. Before us here is a judgment of a three-judge District Court for the Southern District of New York which sustained the validity of New York's 1968 congressional districting statute, N. Y. L. 1968, c. 8. 281 F. Supp. 821 (1968). In 1967 that court had struck down an earlier districting statute apportioning New York's 41 congressional seats and had retained jurisdiction of the case pending action by the New York Legislature to redress the plan's deficiencies. The court recognized that a thorough revision of district lines might not be possible in time for the upcoming 1968 congressional election but concluded nevertheless that "there are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities." 273 F. Supp. 984, 992, aff'd 389 U. S. 421 (1967).

On February 28, 1968, a month and a half after the New York Legislature reconvened, the districting statute presently under attack was enacted. After a hearing, the three-judge court, on March 20, 1968, sustained the statute, stating that the districting plan afforded New



York voters "an opportunity to vote in the 1968 and 1970 elections on the basis of population equality within reasonably comparable districts." 281 F. Supp., at 826. We noted probable jurisdiction. 393 U. S. 819 (1968). We reverse insofar as the judgment of the District Court sustains the plan for use in the 1970 congressional election.

Appellant levels two constitutional attacks against the statute: (1) that the statute violates the equal-population principle of *Wesberry v. Sanders*, 376 U. S. 1 (1964), and (2) that the statute represents a systematic and intentional partisan gerrymander violating Art. I, § 2, of the Constitution and the Fourteenth Amendment. We do not reach, and intimate no view upon the merits of, the attack upon the statute as a constitutionally impermissible gerrymander. We hold that reversal of the District Court's judgment is compelled by our decision today in *Kirkpatrick v. Preisler*, ante, which elucidates the command of *Wesberry* that congressional districting meet the standard of equal representation for equal numbers of people as nearly as is practicable.

The District Court correctly held in its 1967 opinion that "there is a burden on the proponent of any districting plan to justify deviations from equality." 273 F. Supp., at 987. The District Court took no testimony on the question of justification at the hearing held to consider the 1968 statute. Recognizing that the statute, which was enacted with virtually no debate on its merits in either house of the New York Legislature, was the work of a Joint Legislative Committee, the court's 1968 opinion refers to the Report of the Joint Committee as the source of the justifications relied upon as sufficient to sustain the population disparities created by the plan. 281 F. Supp., at 823-824. We have been referred to the same source.

The Report recites that the Committee "gave priority to the population totals in the several districts" as they appeared in the 1960 decennial census and that "very limited" consideration was given to population shifts within the State since 1960. The Report recites further that "[o]ther considerations were the geographical conformation of the area to be districted, the maintenance of county integrity, the facility by which the various Boards of Elections can 'tool up' for the forthcoming [1968] primary election, equality of population within the region, and equality of population throughout the state." Interim Report of the Joint Legislative Committee on Reapportionment of N. Y. State Legislature (1968).

The heart of the scheme, however, lay in the decision to treat seven sections of the State as homogeneous regions and to divide each region into congressional districts of virtually identical population. Thirty-one of New York's 41 congressional districts were constructed on that principle. The remaining 10 districts were composed of groupings of whole counties. A chart showing the population of each district under the 1968 statute appears in the Appendix to this opinion. The seven regions are: (a) Suffolk and Nassau Counties on Long Island with five districts having an average population of 393,391 and a maximum deviation from that average of 208; (b) Queens County with four districts having an average population of 434,672 and a maximum deviation from that average of 120; (c) Kings County plus a district made up of part of Kings and part of Queens, and a district made up of Richmond County and part of Kings, with seven districts having an average population of 417,171 and a maximum deviation from that average of 307; (d) New York and Bronx Counties with eight districts having an average population of

390,415 and a maximum deviation from that average of 496; (e) Westchester and Putnam Counties with two districts having an average population of 420,307 and a maximum deviation from that average of 161; (f) Wayne plus part of Monroe and the remainder of Monroe plus four other counties with two districts having an average population of 410,688 and a maximum deviation from that average of 256; and (g) Erie and Niagara Counties with three districts having an average population of 435,652 and a maximum deviation from that average of 228. The 10 remaining "North country" districts were composed of groupings of whole counties.

It is clear that our decision in *Kirkpatrick v. Preisler*, ante, compels the conclusion that this scheme is unconstitutional. We there held, at —, that "the command of Art. I, § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown." The general command, of course, is to equalize population in all the districts of the State and is not satisfied by equalizing population only within defined sub-states. New York could not and does not claim that the legislature made a good-faith effort to achieve precise mathematical equality among its 41 congressional districts. Rather, New York tries to justify its scheme of constructing equal districts only within each of seven sub-states as a means to keep regions with distinct interests intact. But we made clear in *Kirkpatrick* that "to accept population variances, large or small, in order to create districts with specific interest orientations is antithetical to the basic premise of the constitutional command to provide equal representation for equal numbers of people." To accept a scheme such as New York's would permit groups of districts with

defined interest orientations to be over-represented at the expense of districts with different interest orientations. Equality of population among districts in a sub-state is not a justification for inequality among all the districts in the State.

Nor are the variations in the "North country" districts justified by the fact that these districts are constructed of entire counties. *Kirkpatrick v. Preisler*, ante.

We appreciate that the decision of the District Court did not rest entirely on an appraisal of the merits of the New York plan. As noted earlier, when the three-judge District Court in 1967 held the then-existing districting plan unconstitutional, it recognized that the imminence of the 1968 election made redistricting an unrealistic possibility and therefore said only that "[t]here are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities." 273 F. Supp., at 992. On February 26, 1968, the New York Legislature enacted the plan before us. On March 20, 1968, the District Court approved the plan for both the 1968 and 1970 congressional elections. Since the 1968 primary election was only three months away on March 20, we cannot say that there was error in permitting the 1968 election to proceed under the plan despite its constitutional infirmities. See *Kilgarlin v. Hill*, 386 U. S. 120, 121 (1966); *Martin v. Bush*, 376 U. S. 222, 223 (1964); *Kirkpatrick v. Preisler*, 390 U. S. 939 (1968). But ample time remains to promulgate a plan meeting constitutional standards before the election machinery must be set in motion for the 1970 election. We therefore reverse the judgment of the District Court insofar as it approved the plan for use in the 1970 election and remand the case for the entry of a new judgment consistent with this opinion.

*It is so ordered.*



## APPENDIX.

### POPULATION OF NEW YORK'S CONGRESSIONAL DISTRICTS UNDER 1968 PLAN.

<i>C. D.</i>		<i>Dev. %</i>	<i>Description.</i>
1	393,585	- 3.845	Part of Suffolk.
2	393,465	- 3.874	Part of Suffolk, Part of Nassau.
3	393,434	- 3.882	Part of Nassau.
4	393,183	- 3.943	Part of Nassau.
5	393,288	- 3.918	Part of Nassau.
6	434,615	+ 6.178	Part of Queens.
7	434,750	+ 6.212	Part of Queens.
8	434,552	+ 6.163	Part of Queens.
9	434,770	+ 6.217	Part of Queens.
10	417,122	+ 1.905	Part of Queens, Part of Kings.
11	417,090	+ 1.897	Part of Kings.
12	417,298	+ 1.948	Part of Kings.
13	417,040	+ 1.885	Part of Kings.
14	417,080	+ 1.895	Part of Kings.
15	417,090	+ 1.898	Part of Kings.
16	417,478	+ 1.992	Richmond, Part of Kings.
17	390,742	- 4.540	Part of New York.
18	390,861	- 4.511	Part of New York.
19	390,023	- 4.715	Part of New York.
20	390,363	- 4.632	Part of New York.
21	390,552	- 4.586	Part of New York, Part of Bronx.
22	390,492	- 4.601	Part of Bronx.
23	390,228	- 4.665	Part of Bronx.
24	390,057	- 4.707	Part of Bronx.
25	420,146	+ 2.644	Putnam, Part of Westchester.
26	420,467	+ 2.722	Part of Westchester.
27	409,349		Rockland, Orange, Sullivan, Delaware.
28	396,122	- 3.225	Dutchess, Ulster, Columbia, Greene, Schoharie.
29	425,822	+ 4.031	Albany, Schenectady.
30	415,030	+ 1.394	Rensselaer, Saratoga, Washington, Warren, Fulton, Hamilton, Essex.
31	425,905	+ 4.051	Clinton, St. Lawrence, Jefferson, Lewis, Franklin, Oswego.
32	385,406	- 5.843	Oneida, Madison, Herkimer.

## WELLS v. ROCKEFELLER.

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<i>C. D.</i>		<i>Dev. %</i>	<i>Description.</i>
33	415,333	+ 1.468	Chemung, Broome, Tioga, Tompkins.
34	423,028	+ 3.348	Onondaga.
35	386,148	- 5.662	Ontario, Yates, Seneca, Cayuga, Cortland, Chenango, Otsego, M'gomery.
36	410,943	+ 0.396	Part of Monroe, Wayne.
37	410,432	+ 0.271	*Part of Monroe, Orleans, Genesee, Wyoming, Livingston.
38	382,277	- 6.608	Chautauqua, Cattaraugus, Allegany, Steuben, Schuyler.
39	435,393	+ 6.369	Part of Erie.
40	435,684	+ 6.440	Part of Erie, Niagara.
41	435,880	+ 6.488	Part of Erie.

State Mean.....	409,324
Largest District (41st C. D.).....	435,880
Smallest District (38th C. D.).....	382,277
Citizen Population Variance (largest district population divided by the smallest district population).....	1.139 to 1
Maximum Deviation above State Mean.....	6.488%
Maximum Deviation below State Mean.....	6.608%

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Nelson A. Rockefeller, as  
Governor of the State  
of New York, et al.

On Appeal From the United  
States District Court for  
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New York.

[April 7, 1969.]

MR. JUSTICE FORTAS, concurring.

I concur in the judgment of the Court and in its opinion except to the extent that the opinion relies upon the Court's opinion in the Missouri redistricting cases, *ante*, p. —, which I have not joined for the reasons stated in my concurring opinion in those cases.

New York does not attempt to defend its plan as a good-faith effort to achieve districts of approximate equality. It argues that it devised a plan based upon the grouping of districts into regions. I agree with the majority that, for purposes of the congressional districting here involved, the State may not substantially or grossly disregard population or residence figures in order to recognize regional groupings within the State. See my dissent in *Avery v. Midland County*, 390 U. S. 474, 495 (1968).